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U. S. Dept. of State.

CITIZENSHIP OF THE UNITED STATES, EXPATRIATION, AND PROTECTION ABROAD.

LETTER

FROM

THE SECRETARY OF STATE,

SUBMITTING

REPORT ON THE SUBJECT OF CITIZENSHIP, EXPATRIATION, AND PROTECTION ABROAD.

DECEMBER 20, 1906.—Referred to the Committee on Foreign Affairs, and ordered to be printed.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1906.

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THE SECRETARY OF STATE,

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DECEMBER 20, 1906.—Referred to the Committee on Foreign Affairs and ordered to be printed.

DEPARTMENT OF STATE,
Washington, December 18, 1906.

SIR: On the 13th of April, 1906, the Senate passed a joint resolution providing for a commission to examine into the subjects of citizenship of the United States, expatriation, and protection abroad, and to make a report and recommendations thereon, to be transmitted to Congress for its consideration. The resolution carried an appropriation of $10,000 for the expense of the commission. (S. Res. No. 30, 59th Congress, 1st session.)

On the 6th of June, 1906, the House Committee on Foreign Affairs, to which aforesaid joint resolution had been referred, reported to the House as follows:

It is the opinion of the committee that legislation is required to settle some of the embarrassing questions that arise in reference to citizenship, expatriation, and the protection of American citizens abroad. The committee, however, is not convinced of the necessity of having a commission to consider these questions or to prepare legislation for submission to Congress. Such commissions are sure to be leisurely, certain to be costly, and apt to be ineffective.

It seems to the committee that the same end can be reached in a more practical way. More information on these questions can be furnished by those who have been obliged to deal with them practically than by any commission of outsiders, however distinguished. We should be glad if the Secretary of State would select some of the gentlemen connected with the State Department who have given special attention to these subjects, have them prepare a report and propose legislation that could be considered by Congress at the next session. The result of such a commission we are confident would be of value. If there was any small expense for clerk hire, etc., in connection with its work, this could, as we understand, be defrayed, under the direction of the Secretary of State, from the general appropriations made by Congress. If a bill remedying such evils as may exist is submitted at the beginning of the next session it shall have the careful attention of this committee, and if its contents are approved we will make every endeavor to have it promptly enacted into law. (Rept. No. 4784, 59th Cong., 1st sess.)

Pursuant to this suggestion of the Committee on Foreign Affairs, Mr. James B. Scott, solicitor for the Department of State, Mr. David

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Jayne Hill, minister of the United States to the Netherlands, and Mr. Gaillard Hunt, chief of the passport bureau, were directed to make the inquiry and report recommendations as appeared to be desired both by the Senate and by the House committee.

I transmit herewith the result of their labors. I beg to commend it to the consideration of the House as a very clear and thorough exposition of this most important subject, upon which it seems to be generally agreed legislation is much needed.

I have the honor to be, sir, your obedient servant,

ELIHU ROOT.

Hon. JOSEPH G. CANNON,
Speaker of the House of Representatives.

DEPARTMENT OF STATE, *December 15, 1906.*

Hon. ROBERT BACON,
The Assistant Secretary of State.

SIR: By an order dated July 3, 1906, the undersigned were constituted a board to inquire into the laws and practice regarding citizenship, expatriation, and protection abroad, and to report recommendations for legislation to be laid before Congress, pursuant to the recommendation of the Committee on Foreign Affairs of the House of Representatives contained in the report of the committee dated June 6, 1906.

The conclusions which we have reached fall under the following heads:

First. Recommendations for constructive legislation.
Second. Recommendations for declaratory legislation.
Third. Recommendations for executive regulations.

As to the first point:

We recommend (*a*) that a law be enacted authorizing the Secretary of State to issue, under such rules and regulations as the President shall prescribe, certificates of nativity to natural-born American citizens temporarily resident abroad or who intend temporarily to reside abroad for legitimate purposes, setting forth the place of their origin, date of birth, and place of permanent residence in the United States.

(*b*) That every male child being an American citizen resident abroad who desires to enjoy the protection of this Government be required upon reaching the age of 18 years to record at the most convenient American consulate his intention to become a resident and remain a citizen of the United States, and to take the oath of allegiance upon attaining his majority.

(*c*) That an American citizen residing continuously outside of the United States for more than one year be required to register at the most convenient United States consulate at least once each year his name and place of residence, date and place of birth, nationality of parents, occupation, and last place of residence in the United States, and to give solemn assurance of his continued allegiance to the United States and of his intention to return thereto. An entry of the names, ages, and place of birth of the wife and minor children should also be required.

(*d*) That the Secretary of State be authorized, under such rules and regulations as the President shall prescribe, to extend the protection of this Government and to issue qualified passports to those

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who have made the declaration of intention to become citizens of the United States in accordance with the requirements of the act approved June 29, 1906, and who go abroad for brief sojourn, such protection and passports not to be effective in the country of the origin of the declarants and not to be granted to those who have resided in the United States for a period of less than three years.

As to the second point:

We recommend (*a*) the passage of an act declaring that expatriation of an American citizen may be assumed:

First. When he obtains naturalization in a foreign state.

Second. When he engages in the service of a foreign state and such service involves the taking of an oath of allegiance to such state.

Third. When he becomes domiciled in a foreign state, and such domicile shall be assumed when he has resided in a foreign state for five years without intent to return to the United States; but an American citizen residing in a foreign state may overcome the presumption of expatriation by competent evidence produced to a diplomatic or consular officer of the United States under such rules and regulations as the President shall prescribe.

Fourth. Any person who shall have accomplished expatriation in the manner set forth in the preceding paragraphs shall, in order to reacquire American citizenship, be required to comply with the laws applicable to the naturalization of aliens.

Fifth. The exercise of the right of an American citizen to expatriate himself shall only be permitted or recognized in time of peace.

(*b*) That an American woman who marries a foreigner shall take, during coverture, the nationality of her husband; but upon termination of the marital relation by death or absolute divorce, she may revert to her American citizenship by registering within one year as an American citizen at the most convenient American consulate, or by returning to reside in the United States, if she is abroad; if she is in the United States, by continuing to reside therein.

(*c*) That a foreign woman who acquires American citizenship by marriage to an American, shall be assumed to retain her American citizenship upon termination, by death or absolute divorce, of the marital relation, if she continues to reside in the United States, unless she makes formal renunciation of such citizenship before a court having jurisdiction to naturalize aliens; and if she proceeds abroad she may continue her American citizenship by registering, within one year, as an American citizen before the most convenient American consulate.

(*d*) A minor and nonresident child born without the United States of alien and nonresident parents shall be deemed a citizen of the United States by virtue of the naturalization of the parent, provided, however, that such naturalization take place during the minority of such child, and provided further, that the citizenship of such minor child shall date from the entry of such minor into the United States permanently to reside therein.

As to the third point:

We recommend (*a*) that in order to prevent the abuse of American passports in foreign countries it be ordered that in future all passports shall be issued only by the Department of State, to be valid for two years, and subject to a single extension for two years

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longer by diplomatic and certain consular officers of the United States; but that in order to provide for cases of emergency diplomatic and certain consular officers of the United States be authorized to issue under prescribed regulations provisional passports for a particular journey or occasion, and limited in the length of time of their validity to not more than six months.

(*b*) That for the purpose of meeting the demands of the local authorities in foreign countries American citizens who have registered in accordance with the law as heretofore recommended be furnished, under departmental regulations, with a statement to the effect that they are so registered, and that complete lists of American citizens thus registered be reported to the Department of State every three months.

We also make this additional recommendation:

That the diplomatic officers of the United States be instructed to open negotiations with the governments to which they are accredited extending and perfecting the treaty relations of the United States with respect to the rights of Americans in order to secure to American citizens rights and privileges in accordance with the recommendations of this report.

No recommendation for a change in existing practice is made with reference to those countries in which the United States exercises extraterritorial jurisdiction, and the recommendations for legislative and executive action are not applicable to such countries. The subject of extraterritoriality is fully treated in Appendix I B.

Respectfully submitted.

JAMES B. SCOTT,
DAVID J. HILL,
GAILLARD HUNT,
Members of the Board.

SAMUEL B. CRANDALL,
Secretary of the Board.

DEPARTMENT OF STATE,
Washington, July 3, 1906.

It is ordered that a board be convened at the Department of State in the city of Washington on the 9th day of July, 1906, to inquire into the laws and practice regarding citizenship of the United States, expatriation, and protection abroad, and to report recommendations for legislation to be laid before Congress at the next session, pursuant to the recommendation of the Committee on Foreign Affairs of the House of Representatives contained in the report of the committee dated June 6, 1906, on Senate resolution 30, Fifty-ninth Congress, first session.

The board will be composed of James B. Scott, esq., solicitor for the Department of State; David Jayne Hill, esq., minister to the Netherlands, and Gaillard Hunt, esq., chief of the passport bureau, Department of State. Samuel B. Crandall, clerk in the library, Department of State, will act as secretary of the board.

The chief clerk of the Department will furnish the necessary room, stationery, and messenger service.

The board will make its final report to the Assistant Secretary of State on or before the first Monday of December. 1906.

ROBERT BACON,
Acting Secretary.

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I. PROTECTION OF AMERICAN CITIZENS ABROAD.

RECOMMENDATIONS AND OBSERVATIONS.

Recommendations.

First. That in order to render more effective the national policy of regarding voluntary expatriation from one country to another as a right, and to secure the equal protection of American native and naturalized citizens abroad, negotiations should be undertaken to extend and perfect the treaty relations of the United States with foreign countries.

Second. That in order to prevent the abuse of American passports in foreign countries, the customary American passport be henceforth issued only by the Department of State at Washington, to be valid for only two years, but subject to one, and only one, extension, when found necessary, for two years longer, by designated diplomatic and consular officers of the United States. In cases of emergency designated diplomatic and consular officers should be authorized to issue a provisional passport for a particular journey or occasion and limited in time to a period not to exceed six months upon the application of properly accredited American citizens in foreign countries.

Third. That in order to give additional protection to American citizens resident abroad for purposes of study, health, commerce, or other proper reasons, a certificate of nativity be furnished upon proper application to the Department of State at Washington, stating the place of origin, date of birth, names and nationality of parents, and last place of residence in the United States.

Fourth. That American citizens residing continuously for more than one year in any foreign country be required to register with the most convenient United States consular officer once each year, in a book provided for that purpose, their full names and places of residence, together with the date and place of their birth, the names and nationality of their parents, their occupation, their last place of residence in the United States, and their place of residence in the consular district, accompanied with a solemn assurance of their continued allegiance to the United States and of their intention to return thereto. An entry of the names, ages, and places of birth of a wife or of minor children should also be required.

Fifth. That upon arriving at the age of 18 years every male child of an American citizen who has passed the previous five years out of the United States and desires to enjoy the protection of his Government should be required to record at the most convenient American consulate his intention to become a resident of the United States and to take the oath of allegiance thereto on attaining his majority.

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Sixth. That for the purpose of meeting the demands of the local police in foreign countries American citizens residing abroad who have complied with the requirements of registration be furnished, upon application, by the consular officer in whose office they have registered, with an officially stamped statement to that effect, good for one year, and that a complete list of all persons thus registered be reported every three months to the Department of State at Washington.

Observations.

I.

An American citizen going abroad is entitled to the protection of this Government against unlawful molestation of his person and property.

This protection has always been accorded to naturalized citizens equally with native citizens, except that there was fluctuation in the practice of protecting naturalized citizens upon their return to the country of their origin until the act of July 27, 1868 (15 Stat. L., 223), forbade any discrimination whatever between native and naturalized citizens. The act, as embodied in the Revised Statutes, section, 2000, is as follows:

All naturalized citizens of the United States while in foreign countries are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.

This law was a natural result of the practice and contention of the Government from the time of its independence.

After the Declaration of Independence and before the adoption of the Constitution, naturalization was a function of the several State governments, and Delaware, Maryland, South Carolina, and Virginia had general naturalization laws. The law of Delaware provided that after taking the necessary oaths of allegiance an alien—

shall thereupon and thereafter be deemed, adjudged, and taken to be a natural-born subject of this State; and he *shall be thenceforth entitled to all the immunities, rights, and privileges of a natural-born subject of this State: Provided,* That no person who shall become such a subject of the State, by virtue of this act, shall be appointed to any civil office, or eligible as president [of Delaware], member of the privy council or general assembly, unless such person shall have resided within this State five years previous to such election or appointment, and shall have the other qualifications of age and property required by the constitution or system of government.

The law of Maryland said the person naturalized—

shall thereupon and thereafter be deemed, adjudged, and taken to be a natural-born subject of this State; and he *shall be thenceforth entitled to all the immunities, rights, and privileges of a natural-born subject of this State: Provided.* That no person who shall become a natural-born subject of this State by virtue of this act shall be appointed to any civil office, or eligible as governor, member of the council or general assembly, or as a delegate to Congress, unless such person shall have resided within this State seven years previous to such election or appointment, and shall have the property and estate required by the constitution and form of government to execute any of the said offices, respectively.

The law of Virginia said those naturalized—

shall *be entitled to all the rights, privileges, and advantages of citizens,* except that they shall not be capable of election or appointment to any office, legislative, executive, or judicial, until an actual residence in the State of two years from the time of taking such oaths or affirmations aforesaid, nor until they shall have

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evinced a permanent attachment to the State by having intermarried with a citizen of this Commonwealth or a citizen of any other of the United States, or purchased lands to the value of one hundred pounds therein. (Report of the Naturalization Commission, Appendix A).

The effect of naturalization in the several States before the Constitution was adopted was, therefore, to remove alienage, the person naturalized standing in all respects upon the same plane with a natural-born citizen, except that he was under certain removable political disabilities.

The same principle was applied in constructing the Constitution and in the debates in the Constitutional Convention no one proposed any other principle. Gouverneur Morris said "he would let them (naturalized citizens) worship at the same altar (with native citizens), but he did not choose to make priests of them" (Madison's Writings, IV, 159), and this was the sentiment which finally resulted in the provision that the President must be a natural-born citizen (Art. II, sec. 1), and that no one shall be a Representative who has not been a citizen for seven years (Art. I, sec. 2) or a Senator who has not been a citizen for nine years. (Art. I, sec. 3.)

Before the Constitution was adopted passports for the protection of Americans proceeding abroad were issued by the governors or presidents of the several States. There can be no doubt that they described the holders as citizens of the State issuing the passport, and that they were given to naturalized as well as native citizens. The passports issued by the Secretary of State since 1789 have always stated that the persons described were citizens of the United States, and have never stated whether they were native or naturalized citizens. (The American Passport, p. 77.)

When the question of the impressment of American seamen, many of whom were naturalized citizens, first came up, John Marshall, Secretary of State in John Adams's Administration, said, September 20, 1800, in an instruction to Rufus King, this Government's envoy at London:

> With the naturalization of foreigners no other nation can interfere further than the rights of that other are affected. * * * consequently those persons who, according to our laws, are citizens, must be so considered by Britain, *and by every other power not having a conflicting claim to the person.* (MS. Instructions.)

In relation to the same question Secretary Monroe wrote to the British minister, May 30, 1812:

> Your proffered exertions to procure the discharge of native American citizens from on board British ships of war, of which you desire a list, has not escaped attention. *It is impossible for the United States to discriminate between their native and naturalized citizens,* nor ought your Government to expect it, as it makes no such discrimination itself. (Qu. Moore's Digest, III, 563.)

Thus Marshall asserted the right of protection, with a reservation that the country of which the person naturalized had formerly been a subject might have a conflicting claim, and Monroe denied the right of such a claim. These two doctrines were repeated from time to time by succeeding executive officers. Henry Wheaton, minister to Prussia, wrote July 24, 1840, to a naturalized American who was in Prussia, the country of his origin:

> Had you remained in the United States or visited any other foreign country (except Prussia) on your lawful business, you would have been protected by the American authorities, at home and abroad, in the enjoyment of all your

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rights and privileges as a naturalized citizen of the United States. But, having returned to the country of your birth, *your native domicil and national character revert* (so long as you remain in the Prussian dominions), and you are bound in all respects to obey the laws exactly as if you had never emigrated. (Qu. Moore's Digest, III, 564.)

On the other hand Attorney-General J. S. Black said in 1859:

What, then, is naturalization? There is no dispute about the meaning of it. The derivation of the word alone makes it plain. All lexicographers and all jurists define it in one way. In its popular, etymological, and legal sense it signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject. * * * In regard to the protection of our citizens in their rights at home and abroad we have no law which divides them into classes, or makes any difference whatever between them. *A native and a naturalized American may, therefore, go forth with equal security over every sea and through every land under heaven, including the country in which the latter was born.* * * * They are both of them American citizens, and their exclusive allegiance is due to the Government of the United States. One of them never did owe any fealty elsewhere, and the other, at the time of his naturalization, solemnly and rightfully, in pursuance of public law and municipal regulation, threw off, renounced, and abjured forever all allegiance to every foreign prince, potentate, state, and sovereignty whatsoever, and especially to that sovereign whose subject he had previously been. If this did not work a dissolution of every political tie which bound him to his native country then our naturalization laws are a bitter mockery, and the oath we administer to foreigners is a delusion and a snare.

There have been, and are now, persons of very high reputation who hold that a naturalized citizen ought to be protected by the government of his adopted country everywhere, except in the country of his birth; but if he goes there, or is caught within the power of his native sovereign, his act of naturalization may be treated as a mere nullity, and he will immediately cease to have the rights of an American citizen. This can not be true. It has no foundation to rest upon (and its advocates do not pretend that it has any), except the dogma which denies altogether the right of expatriation without the consent of his native country, and that is untenable, as I think I have already shown. * * * The application of these principles to the case of any naturalized citizen who returns to his native country is simple and easy enough. He is liable, like everybody else, to be arrested for a debt or a crime, but he can not rightfully be punished for the mere nonperformance of a duty which is supposed to grow out of that allegiance which he has abjured and renounced. If he was a deserter from the army he may be punished when he goes back, because desertion is a crime. On the other hand, if he was not actually in the army at the time of his emigration, but merely liable, like other members of the state, to be called on for his share of military duty, which he did not perform because he left the country before the time for its performance came round, he can not justly be molested. (9 Op. At. Gen., 359 et seq.)

Congress finally settled the question in favor of the position set forth in Mr. Black's opinion by passing the law quoted at the beginning of this section.

The immediate occasion which called forth the law was the arrest of certain naturalized citizens by the authorities of their parent countries, chiefly the German States, for nonperformance of military service, and numerous arrests of naturalized citizens of Irish origin in the United Kingdom charged with crimes of a political character. At the time these arrests were made the doctrine of indefeasible allegiance stood as the British doctrine, although it was not always strictly observed, and the continental States insisted that their allegiance could not be thrown off without their permission. Allowing for the heat occasioned in the United States by the nature of the arrests, the action of Congress, nevertheless, rested upon a well-defined and not ephemeral popular demand, was taken with deliberation and with unanimous agreement on the principle involved, and

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must be considered a final expression of national policy. Hundreds of petitions requesting the legislation were sent to Congress.

The legislature of Maine passed the following:

Resolved, That it has always been the American doctrine that a citizen of one country may expatriate himself and transfer his allegiance to any other; and that the naturalized citizens of the United States are entitled to the same rights and protection, in the lawful pursuits of life, as native citizens, whether at home or abroad.

Resolved, That the United States should insist upon a recognition of these rights in its intercourse with all other governments.

Resolved, That wherever the American doctrine is denied and the rights of naturalized citizens are violated thereby, it should be regarded as an offense against the United States, and that justice and honor alike demand that the Executive of the Government should take immediate and efficient measures to restore such naturalized citizens to all the rights and privileges belonging to native-born citizens. (H. Mis. Doc. No. 59, 40th Cong., 2d sess., Vol. 1, 1867–68.)

The legislature of Wisconsin resolved—

That no distinction should be tolerated between native born and duly naturalized citizens of the United States in regard to their immunities and privileges in foreign countries, and that a naturalized citizen of the United States temporarily sojourning within the dominions of his former sovereign, can only be compelled to enter the military service or otherwise support the Government of such former sovereign to the same extent and under the same circumstances as might be required of a native born American citizen thus temporarily domiciled in such foreign country. (H. Mis. Doc. No. 60, 40th Cong., 2d sess., Vol. 1, 1867–68.)

The legislature of Maryland called upon Congress to pass—

such laws as honor, justice, and the true policy of the country demand in fully securing to all naturalized citizens the same rights of person and property, both at home and abroad, which are now possessed by the native born. (Id., Doc. No. 75.)

The able and exhaustive report of the Committee on Foreign Affairs of the House, through Hon. N. P. Banks, the chairman (Reports of Committees, No. 1 to No. 46, 2d sess. 40th Cong.; Report No. 13, H. R.), and the debates in the Senate and House, which covered a wide range and were participated in by all the leading Senators and Representatives, left no doubt of agreement on the great point of the right of absolute equality of protection of naturalized and native Americans while in foreign states.

For the purpose of obtaining full information for intelligent guidance in proposing improvements in our laws concerning expatriation and the protection of American citizens abroad, on July 9, 1906, a circular was sent to the diplomatic and certain consular officers of the United States asking for reports on the following subjects:

1. The laws relating to citizenship in the country in which you reside;
2. The means by which citizenship in that country is lost;
3. Whether or not the law of that country authorizes the renunciation of citizenship; and if so, the conditions for the reacquisition of the citizenship thus renounced;
4. Whether, and how far, residence in foreign parts may affect the citizenship of origin;
5. And finally, the practice of the Government to which you are accredited in protecting its citizens permanently residing in other countries.

The law relating to naturalization and the acquisition of citizenship is also desired.

The reports received in reply to this circular have been carefully read, their contents duly considered, and the dispatches, with their inclosures, filed for future reference in the archives of the Department

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of State under the title: "Reports of diplomatic and certain consular officers in reply to Department's circular regarding citizenship of July 9, 1906." For convenience of reference their more important contents are herewith furnished in the form of an appendix to this report.

The policy of the United States regarding the right of voluntary expatriation and the equal protection of American citizens abroad being fixed in its history and statutes, the chief value of information regarding the laws and practices of other nations lies in the indications that may be thus obtained of the methods by which our principles may be made more effective.

The subject of most vital interest to the United States in connection with questions of citizenship is the attitude of foreign governments with regard to the nature and duration of the relationship between a subject or citizen and his government. This attitude varies widely in different countries. In some the relationship of the individual to his government is regarded as capable of alteration only with the express permission of the sovereign. In the greatest number of cases, however, the right of voluntary expatriation is admitted, and the relationship is supposed to cease whenever the subject or citizen renounces the old and assumes a new allegiance.

The various attitudes of governments upon this subject may be summarized under the following six types:

A. The right of voluntary expatriation is wholly denied. A subject has no right to leave the territory of his origin without the express permission of his sovereign; he may not renounce his original allegiance or assume another, and upon his return to the jurisdiction of his origin he is liable to arrest and punishment. (For example, this is the attitude of Russia and Turkey.)

B. The right of expatriation is admitted, provided there exists at the time no unperformed obligation to military service; but, in case this obligation exists, naturalization in a foreign country obtained before it is discharged is considered as void. (For example, this is the attitude of France.)

C. The right of expatriation is admitted, but naturalization in a foreign country does not become valid from the point of view of the country of origin without an express and formal renunciation of the original citizenship made in the country of origin and in accordance with its forms of law. (For example, this is the attitude of Switzerland.)

D. The right of expatriation is admitted, but, while naturalization abroad is freely allowed, in case of a return to the country of origin the person thus naturalized is not denied the rights of citizenship in that country, but is permitted without further formality to retain his rights as a citizen as if he had never departed from the country. (For example, this is the attitude of Venezuela.)

E. The right of expatriation is admitted, and citizenship absolutely ceases (although it may afterwards be legally recovered) at the moment when the act of naturalization in a foreign country is performed. (This is the attitude of the majority of foreign governments.)

F. The right of expatriation is admitted and is assumed to have been accomplished when a citizen absents himself from the parent

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country for a prolonged period of years. (For example, this is the attitude of the Netherlands.)

In view of the diverse conditions which are imposed by the laws of foreign countries, no general legislation on the part of the United States can of itself secure the equal treatment of naturalized American citizens everywhere.

The announcement by Congress of a principle does not involve an acceptance of the principle by other governments, this being obtainable only by treaty. As it happened, the passage of the act of July 17, 1868, was followed by the enactment of a new law by the British Parliament (33 Vict., ch. 14) recognizing the right of expatriation of British subjects; and even before the passage of the act of July 17, 1868, a treaty was perfected by which the North German Confederation agreed to recognize as Americans former Germans who had secured our naturalization (May 27, 1868). Soon afterwards similar treaties were made with Bavaria (October 8, 1868), with Belgium (July 30, 1869), with Hesse (August 31, 1869), with Baden (January 10, 1870), with Wurttemberg (March 7, 1870), with Great Britain (September 16, 1870, and May 5, 1871), with Austria-Hungary (August 1, 1871), with Norway and Sweden (January 12, 1872), and with Denmark (April 15, 1873). (Van Dyne on Citizenship, p. 327 et seq.)

Article 1 of the treaty with the North German Confederation says:

> Citizens of the North German Confederation who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years shall be held by the North German Confederation to be American citizens, and shall be treated as such.

The substance of this article is repeated in the treaties with Austria-Hungary, Baden, Bavaria, Hesse, Sweden and Norway, and Wurttemberg. The treaty with Belgium says:

> Reciprocally, Belgians who may or who shall have been naturalized in the United States will be considered by Belgium as citizens of the United States.

And this form is followed in the treaties with Denmark and Great Britain also, the only difference between these treaties and the others cited here being in the omission of the requirement of five years' residence. This difference was never important, as the class of persons who might be naturalized before residing in the United States for five years was never numerous and is now extremely small.

The United States has no naturalization treaties with the following countries of Europe: France, Italy, The Netherlands, Portugal, Roumania, Russia, Servia, Spain, Switzerland, and Turkey.

The present time seems to be appropriate for renewing efforts to obtain such treaties with these and other powers. The new naturalization law places naturalization more completely in the control of the Federal Government than it has been heretofore. It creates a naturalization division in the Department of Commerce and Labor, to which returns of all naturalizations are required to be made, and which has supervision over all naturalizations. Fraudulent and improper naturalizations will, it is confidently believed, be extremely rare in the future. The law also provides that no one shall be naturalized who does not intend to reside permanently in the United States, and the complaint which was formerly made, and which was not without foundation, that foreigners secured our naturalization

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with intent to return to the country of their origin and reside under the protection of the United States, can not in the future have the force which it had in the past.

II.

To insure the proper recognition of American citizens abroad and a due consideration for their interests, it is extremely important that the possession of an American passport should be an unquestioned guaranty of actual citizenship. The protection of an American passport has often been sought by improper persons and for improper purposes. Among these are escape from obligations in the United States and the enjoyment of certain immunities abroad, such as freedom from taxation and military service, to which the bearers or their children would otherwise be liable. At present passports are issued not only by the Secretary of State at Washington, but by the heads of all American embassies and legations and certain consular officers. When refused at one chancellery they have often been successfully applied for at another, until it has been found necessary for the Department of State to issue an instruction requiring an embassy or legation refusing a passport to inform other embassies and legations of the fact and of the reason for it. The regulations for the issuing of passports are, however, necessarily so complicated and the possibility of variation of judgment in particular cases is so great that their results can never in this manner be made uniform. Total strangers, sometimes speaking only a foreign language, and often possessing no papers of a satisfactory kind, present themselves at our embassies and legations, claiming to be American citizens and demanding passports. The responsibility of refusal or compliance is frequently not inconsiderable. But the chief evil, perhaps, is the practice of issuing successive passports to the same individual while abroad, who may thus manage by varying his residence to keep himself supplied with these proofs of citizenship for a long period of time in strict accordance with the letter though against the spirit of the regulations.

It is highly desirable that American passports should be strictly confined to the use for which they were originally intended—namely, a free and safe passage through foreign territory and a temporary sojourn abroad.

The early returns of passports issued by our ministers and consuls abroad show that many of them, being granted for a specific voyage or journey, terminated after their purpose was accomplished. (See The American Passport, p. 75.)

In 1845 the Department of State announced that a new passport must be procured each time a citizen might go abroad. In 1873 the duration of a passport was limited to two years, and since 1892 this fact has been indicated on the face of the passport. But passports were found so convenient as testimonials of citizenship that unscrupulous persons abroad would exchange an old for a new one without returning to the United States, until in 1893 a new application was required whenever a new passport was desired. So long, however, as passports are issued by all the embassies and legations and certain consular officers in various parts of the world, the prac-

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tice of converting the passport into a practically permanent possession by repeated renewals can not well be prevented.

To meet this difficulty and to correct this abuse, it is suggested that, with the exception specially noted in the recommendation, after a certain period of notification no passport be issued except by the Department of State. All regular passports would then bear numbers in the same numerical series and would be in every respect uniform. As the term of two years might in some instances be too brief for the convenience of persons making a temporary sojourn abroad, designated diplomatic and consular officers should be authorized to stamp upon the original passport one, but not more than one, extension, valid for an additional period of two years. By this method all passports would be issued in a uniform manner, confined to their proper use, and their uniformity of form be a perfect guaranty of their genuineness and conformity to the law and regulations.

III.

While for many reasons a passport should be valid for only a brief term, it is not an unreasonable proposition that every American citizen loyal in his allegiance to the United States should possess some permanent evidence of his American nativity. For many good reasons an American citizen may choose to reside in a foreign land for a longer period than four years. In the knowledge he may acquire or in the service he may render to his country by residence abroad as a student, an artist, a writer, or a representative of American business interests, he may be entitled to the grateful consideration of his fellow-citizens at home. But such residence in many foreign countries is not permitted to aliens unless they are furnished with evidence of their nationality. Frequently a mere certificate of foreign birth is all that is required, but it must be in a well-authenticated form. Unfortunately, our methods of record in the United States do not render it always easy for a native-born American citizen to procure a properly authenticated birth certificate. The law does, indeed, provide for certificates of citizenship for naturalized American citizens, but it is doubtful if the police of a foreign country would recognize this certificate without legalization by a diplomatic or consular officer. It is desirable, therefore, that for purposes of identification the Department of State be authorized to issue, upon proper application, a certificate of nativity to native-born American citizens, stating the place of origin, date of birth, names and nationality of parents, and last place of residence in the United States.

This document would not take the place of a passport, but would furnish to diplomatic and consular representatives of the United States a basis for record in their register in the case of American citizens resident abroad, in the manner to be described below, and would correspond to the certificate of citizenship authorized by law for naturalized citizens, the latter being an evidence of naturalization, the former an evidence of nativity. Neither would constitute for a foreign government conclusive evidence of continued American citizenship, for a new allegiance might destroy its value as evidence of that fact; but either might, in connection with supplementary evidence, furnish to a diplomatic or consular officer sufficient ground for the registration of the bearer in the manner described below.

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IV.

The impossibility of procuring through our consular officers an adequate (or even approximate) report of the number and distribution of American citizens resident in foreign countries, as shown by the replies to the Department's circular of July 6, 1906, suggests the importance of some method of obtaining this information in an accurate form. The only sure method would seem to be in the requirement of systematic registration by American citizens residing abroad.

In this connection attention is called to the circular of the Belgian Government of May 15, 1900, concerning the registration of Belgians abroad. Since 1881 the department of foreign affairs of that Government has furnished its consular officers with record books for the purpose of registering Belgians who reside within their jurisdiction. The purpose is partly statistical, partly to afford Belgians who wish to comply with this formality the means of proving whether they desire to retain their nationality and that their settlement abroad is made with the intention of returning to their mother country. In many cases, it is alleged, the information thus obtained by consuls as to the residence and personal status of the Belgians placed under their jurisdiction facilitates and expedites consular intervention.

The registration consists in the inscription by the individual in a special record book, indicating the date of inscription, the full name of the applicant, his profession, the place and date of his birth, his civil status (bachelor, married, widower, divorced), the full names of his father and mother, the place of his last domicile in Belgium or that of his parents, the date of his arrival and his place of residence in the consular jurisdiction, the place of his previous residence, the documents that he has produced in proof of his citizenship, the character of his signature, and, lastly, the full names, places, and dates of birth of his wife and children.

(For the form of record, see, infra, inclosure to Mr. Wilson's dispatch No. 108.) No charge is made for the registration, but a small fee is demanded for a transcript.

The usefulness of such a system of registration is evident, and the experience of the Belgian Government has shown that it is entirely practicable. It has also been adopted by Spain (see art. 26 of the Spanish Civil Code, Walton's edition, pp. 14, 15), which holds that—

Spaniards who change their domicile to a foreign country, where they may be considered as natives without other conditions than that of residence in it, in order to preserve their Spanish nationality shall be required to manifest that such is their will before the Spanish diplomatic or consular agent, who shall inscribe them in the registry of Spanish residents, as well as their consorts, if they are married, and any children which they may have.

Portugal has a similar regulation (see Portuguese Consular Regulations, approved by decree of Dec. 24, 1903, pp. 12, 13). Article 26 of the chapter on "Consular protection" reads:

Consular officers shall promote by all means at their disposal the consular matriculation of Portuguese subjects.

§ 1. At every consulate and vice-consulate shall be kept a special register for the matriculation of Portuguese. This register shall contain, in separate columns, the following particulars about each person: Surname and Christian names, place and date of birth, condition, occupation, last residence in the Kingdom, residence in the consular district, date of arrival, evidence by which his nationality has been proved, date of matriculation, and any other observations.

§ 2. A certificate of the entry in the register shall be issued. It shall be considered as a title of nationality.

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V.

The separate registration of male children of American citizens who have reached the age of 18 years and who have either been born and lived all their lives abroad or have spent a long period of time in a foreign country is made expedient by the fact that it is at this age that, in several foreign countries, they become liable to military service. In the case of such children it is our national policy to claim them as American citizens, without regard to the place of their birth, as the offspring of American citizens; to protect them as such until they are 21 years of age, and to permit them on attaining their majority to choose whether they will remain American citizens or not.

The practical defect in the execution of this policy is that our Government may be called on to protect during the period of liability to military service a person who has no intention of ever residing in the United States or performing any obligations to it, but who, after shielding himself from the performance of his duty to the Government under which he resides by the ambiguity of his position, finally accepts the allegiance of the country of his birth or continued domicil.

It would appear reasonable and desirable to resolve this ambiguity before it has served the purpose of a person whose intention is that of disloyalty to both the governments involved. In the case of such a person there are three alternatives: (1) He may escape the performance of his duty to the government where he resides by claiming American protection, and at majority declare his allegiance to it; (2) he may escape that duty until his majority, and while still retaining a nominal American citizenship decide to continue his residence abroad, merely using that citizenship as a means of further protection; or (3) he may loyally accept allegiance to the United States, return to his country for the purpose of there residing, and faithfully discharge his duties as a citizen.

If the first or second of these three alternatives expresses the young man's real purpose, there appears to be no good reason why he should enjoy the protection of the United States. If, on the other hand, the third alternative represents his bona fide intention, he clearly deserves that protection. The recommendation, therefore, is that he should be required at the age of 18 to register his intention to reside in the United States and to take the oath of allegiance thereto upon attaining his majority if he wishes to enjoy its protection. Even in this case protection may, perhaps, be temporarily procured without a real purpose to execute the alleged intention; but, under the system of registration proposed in this report, a young man who should thus violate his pledge would be in danger of forfeiting not only his good name, but the further protection of his government.

VI.

The sixth recommendation, namely, that American citizens who have complied with the requirements of registration should be furnished with an official statement to that effect, hardly needs discussion. So long as a citizen has not passed into the category of aliens he should have the benefit of the evidence of his citizenship in such a

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form as would meet the requirements of the police in the place of his residence. If the duration of his absence from the United States and the nature of his occupation should conclusively establish his intention not to return and perform the duties of citizenship, he would properly be denied both the consular statement of his nationality and the right to be registered as an American citizen.

In general, the spirit of the recommendations proposed has been (1) to furnish bona fide American citizens with suitable and well-authenticated evidence of their citizenship; (2) to prevent the fraudulent use of American protection; (3) to render the course of the Government of the United States in exercising that protection more clear and certain. It is believed the system proposed will have the advantage (1) of showing what individuals are deserving of American protection, and (2) of aiding in the detection of those who intend to use the power and prestige of the United States merely as a shield for nefarious practices. American citizenship is the highest civic privilege enjoyed by free men anywhere. The Government of the United States has never failed to guard and uphold the rights and prerogatives of its citizens; but it has often been embarrassed by pretenses that were intended to procure immunity from obedience to law both at home and abroad. From whatever point of view the subject may be regarded, the duty of our Government is clear. If its protection be fraudulently sought against itself, evasion of the law becomes a double offense against the State. If, on the other hand, it be sought for the purpose of evading just obligations to another government, the continuance of protection is not only a violation of international comity too serious to escape reproach, but a disregard of national dignity too flagrant for good citizens to support. To protect to the fullest extent the rights of every American citizen, and to afford no refuge to imposters and pretenders—this is the plain standard of national fidelity and international obligation.

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II. PROTECTION ABROAD OF THOSE WHO HAVE MADE THE DECLARATION OF INTENTION TO BECOME CITIZENS OF THE UNITED STATES.

RECOMMENDATION AND OBSERVATIONS.

The report of the Naturalization Commission, submitted to Congress at its last session, recommended that the declaration of intention as a preliminary to naturalization as a citizen of the United States should be abolished, showing as an important reason for the recommendation that one who has made the declaration occupies the anomalous position of having effectually abandoned one allegiance without having acquired another; but the new naturalization law has retained this requirement, and it seems probable that it will continue to be a part of our naturalization system. Realizing this fact, the logical conclusion seems to be that the Government must accept the responsibilities which the law imposes, and accord under certain circumstances temporary protection to a declarant who goes abroad on a visit.

We offer, therefore, the following

Recommendation.

That the protection of this Government be accorded to those who have made the declaration of intention to become citizens of the United States and who go abroad for brief sojourn, but that such protection should not be effective in the country of their origin and should not be extended to those who have resided in the United States for a less period than three years.

Observations.

Under the law an alien who desires to become a citizen of the United States must declare on oath before the clerk of a court authorized to naturalize aliens that it is his intention to become a citizen of the United States and to renounce all other allegiance and that he intends permanently to reside in the United States, such declaration being made at least two years prior to his final application for admission as a citizen of the United States. (Sec. 4, par. 1, and sec. 27, form of declaration, act approved June 29, 1906.) This requirement is applicable to all aliens except those who have been honorably discharged from the military service of the United States (sec. 2166, Rev. Stat.), but as none can be enlisted in the Army who have not made the declaration (act of Aug. 1, 1894) this exception is now unimportant. It is not required in the case of one who has served five years in the Navy or one enlistment in the Marine Corps (act of July 25, 1894), but it is the policy of the Navy Department not to enlist aliens.

One who has made the declaration of intention enjoys in the United States certain rights which commonly pertain to citizens of

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the several States and of the United States. He may vote at all elections, State or national, in Arkansas, Indiana, Kansas, Missouri, Nebraska, South Dakota, Texas, Oregon, and Wisconsin. Under the laws of Delaware, Kentucky, New York, and Washington he enjoys greater rights in the acquisition of real property than other aliens enjoy. In some places (notably in the States of Illinois and Idaho) he may be employed upon public works and other aliens may not. Under the preemption and homestead laws of the United States he may preempt and acquire public lands (secs. 2259, 2289, Rev. Stat.). Not only may he be enlisted in the Army, but during the civil war he was compelled to perform military service as though he were a full citizen (act of March 3, 1863, 12 Stat. L., 731). Under section 2168, Revised Statutes, the widow and children of one who has made the declaration may, if he dies before he is actually naturalized, be considered as citizens "upon taking the oaths prescribed by law"—that is to say, the inchoate rights of the father are recognized as transmissible and the widow and children may secure full naturalization without themselves making the declaration. The sixth paragraph of section 4 of the act of June 29, 1906, has as its object the reenactment of this provision.

The Supreme Court in the case of Boyd *v.* Thayer said on this point:

> Clearly minors acquire an inchoate status by the declaration of intention on the part of their parents. If they attain their majority before the parent completes his naturalization, then they have an election to repudiate the status which they find impressed upon them, and determine that they will accept allegiance to some foreign potentate or power rather than hold fast to the citizenship which the act of the parent has initiated for them. (143 U. S., 178.)

It is plain that those who have made the declaration are accorded privileges and perform duties from which other aliens are debarred. Nevertheless, the Government does not accord them protection if they proceed abroad.

Their citizenship is in a formative stage, and in order that it may be completed it is necessary that they reside continuously in the United States for five years, the term continuous residence being understood in the legal sense, and not as being interrupted by brief absence from the United States. By an act approved March 3, 1813 (2 Stat. L., 811), no person could be admitted to citizenship who had not resided in the United States for five years, without being at any time out of its territory, but the latter part of this requirement was specifically repealed by the act of June 26, 1848 (9 Stat. L., 240), and it is now beyond dispute that the continuous residence required by law does not make one who intends to apply for our citizenship a mere prisoner at large in the United States condemned to lose the benefit of his formally expressed intention and desire as a penalty for his stepping beyond our boundaries even for an instant.

It is plain, however, that the Government does not owe protection to one who has declared his intention and goes abroad for a period of time long enough to destroy the continuousness of his residence. By this act his declaration would be nullified and as though it had not been made. It is equally true that he should not be protected if he should return to the country of his origin. As he has not yet accomplished expatriation from that country, it may of right

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claim him as its citizen if he places himself within the jurisdiction of its laws, and this Government, not having yet invested him with its citizenship, can not justly dispute the claim. This principle should be of general application. It has been specifically recognized in our naturalization conventions with Austria, Germany, Wurttemberg, and Sweden and Norway.

The case of one who goes to a third country is different. Our practice now places him in the distressing attitude of having no government from which he can claim protection. Our laws have required him to declare that he intends to renounce allegiance to his parent government, and after he has done this the parent government can not be expected to extend him its protection, nor should he be encouraged to seek such protection. It may well be questioned whether if he did so it would not be considered as having vitiated his declaration of intention. As he has formally sworn that he intends permanently to reside in the United States and is actually domiciled in the United States, it is this Government to which he must look for that protection, which he should obtain nowhere else.

Residents of the United States who have made the declaration and are required for good and sufficient reasons thereafter to make a trip abroad frequently apply to the Department of State for some document to protect them in their travels, and these requests are always denied. It is specifically forbidden by law to issue a passport to anyone who is not a citizen of the United States (act of August 18, 1856) or a loyal resident of our insular possessions (act of June 14, 1902), and a passport is the only document issued by this Government to protect one who is proceeding abroad and the only document generally recognized by foreign governments as attesting the right of the holder to American protection.

Under the law any alien may make the declaration of intention at any time before a clerk of a court having jurisdiction to naturalize aliens. He may make it immediately upon his arrival in the United States or he may have resided here for many years before making it. It follows that if this Government should protect those who make the declaration and go abroad it would be liable to be imposed upon by aliens not domiciled in the United States, who might make the declaration falsely soon after their arrival so as immediately to proceed abroad under our protection. To guard against this imposition it would seem to be reasonable to require, as evidence that domicil in the United States has been really acquired, that the declarant who applies for our protection should be required to prove that he has resided in the United States for at least three years; and in order that the continuance of residence required by law before naturalization might not be disturbed, the passport which this Government might issue should be limited to a period not exceeding six months.

Until recent years the practice was not uniform in the matter of protecting those who had made the declaration, and there are notable instances where such protection was extended. The rule in effect at one time is thus stated by Secretary Marcy in an instruction dated September 14, 1854:

> The declaration, indeed, is prima facie evidence that the person making it was at its date domiciled in the United States, and entitled thereby, though not to all, to certain rights of a citizen, and to much more consideration when abroad than is due to one who has never been in our country; but the declarant, not

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being a citizen under our laws, even while domiciled here, can not enjoy all the rights of citizenship either here or abroad. He is entitled to our care, and in most circumstances we have a right to consider him as under our protection, and this Government is disposed and ready to grant him all the benefits he can or ought to receive in such a situation. (Moore's Digest, III, p. 839.)

The rule now in effect was thus stated by Secretary Olney in 1896:

It is established by the practical interpretation and application of domestic statutes, and by various treaties of naturalization concluded with foreign states, that a mere declaration of intention to become a citizen can not clothe the declarant with any of the international rights of citizenship. (Van Dyne on Citizenship, p. 75.)

The unsatisfactory status of the declarant was set forth by President Cleveland in his annual message of 1885:

The rights which spring from domicile in the United States, especially when coupled with a declaration of intention to become a citizen, are worthy of definition by statute. The stranger coming hither with intent to remain, establishing his residence in our midst, contributing to the general welfare, and by his voluntary act declaring his purpose to assume the responsibilities of citizenship, thereby gains an inchoate status which legislation may properly define.

The feasibility of granting a temporary protection to a declarant finds an additional justification if we consider the matter of domicil. It is of course evident that mere residence, however long continued, can not, in the absence of a statute, invest such resident with the rights and corresponding duties of citizenship; but it is not unreasonable that residence extended over a long period of time, by which the person and fortune of such resident becomes incorporated, as it were, into the population and resources of our country, gives to such an one a claim upon the good will and protection of the country, based upon the fact of residence.

Indeed, it is not too much to say that the oath of the declarant may be taken as evidence of domicil, and that domicil depending upon actual residence with intent to continue such residence is therefore shown conclusively by the oath of the declarant. Domicil, as such, can not, any more than mere residence, as such, confer the rights of citizenship, but permanent residence may well be considered as giving a person so domiciled greater claims upon the country of his residence than a person temporarily sojourning would be justified in claiming.

Viewed in this light, the declarant is not only making evident an intent to become a citizen, but it is evidence of the most solemn kind of the establishment of a permanent domicil. If the subject be so considered, it will be seen that the attitude of Secretary Marcy, in the celebrated Kosta case, may be well supported and cited as an authority for protecting persons domiciled in this country who may temporarily find themselves in a foreign country other than the land of their birth.

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III. EXPATRIATION.

RECOMMENDATIONS AND OBSERVATIONS.

Recommendations.

The law asserting the right of expatriation (sec. 1999, Rev. Stat.) should be supplemented by an act declaring that expatriation of an American citizen may be assumed:

First. When he obtains naturalization in a foreign state.

Second. When he engages in the service of a foreign government and such service involves his taking an oath of allegiance to such government.

Third. When he becomes domiciled in a foreign state, and such domicil may be assumed when he shall have resided in a foreign state for five years without intent to return to the United States; but an American citizen residing in a foreign country may overcome the presumption of expatriation by competent evidence produced to a diplomatic or consular officer of the United States under such rules and regulations as the President shall prescribe.

Fourth. Any person who shall have accomplished expatriation in the manner set forth in the preceding paragraphs shall, in order to reacquire American citizenship, be required to comply with the laws applicable to the naturalization of aliens.

Fifth. The exercise of the right of an American citizen to expatriate himself shall only be permitted or recognized in time of peace.

Observations.

I AND II.

The first and second clauses of the recommendations require little comment. Other countries, like our own, do not naturalize foreigners until they have foresworn all other allegiance, and an American citizen who foreswears allegiance to the United States has expatriated himself from the United States.

He has done so with equal certainty when he takes an oath of allegiance to a foreign government in order to enter its service. It is true that because of conflicting laws on the subject of citizenship in different countries a child may be born to a double allegiance; but no man should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance be due to more than one.

III.

The third clause of the recommendation requires more extended notice.

In 1808 an effort was made in Congress to pass a bill providing that—

> all citizens shall be considered such no longer than while they actually reside within the United States; and that, also, if any citizen shall expatriate himself, he shall, ipso facto, be deemed an alien, and ever after be incapable of becoming a citizen.

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The bill went to the Committee of the Whole in the House of Representatives, but was never acted upon. (Franklin's Naturalization in the United States, 115, 116.)

In 1817 the question was revived, and the following provision was reported to the House:

That whensoever any citizen of the United States shall, by a declaration in writing, made and executed in the district court of the United States, within the State where he resides, in open court to be by said court entered of record, declare that he relinquishes the character of a citizen, and shall depart out of the United States, such person shall, from the time of his departure, be considered as having exercised his right of expatriation, and shall thenceforth be considered no citizen.

He was to remain an alien until he should have gone through the usual process of naturalization. (Franklin's Naturalization, 144.) This bill failed of passage and the subject was not seriously revived till 1868.

The bill from which the act of July 27, 1868, was evolved, as presented to the House January 29, 1868, by the Committee on Foreign Affairs, contained this as the third section:

That if any naturalized citizen of the United States shall return to his native country with intent to resume his domicile therein; or if any citizen shall leave the United States with the intention of permanent residence in any foreign state; or shall fail to make annual return of his property in the United States for taxation to the assessor of internal revenue for the district of the United States in which said citizen last resided; or shall engage as an army or navy belligerent in any foreign war or service, such citizen shall not be entitled to the interposition of the Government in his behalf under the provisions of this act.

The fourth section provided that the term "domicile," in the preceding section, should be construed to mean a continuous residence of more than five years in the native country of the naturalized citizen, or establishing himself in any business which denoted an intention to resume a permanent residence. (Cong. Globe 71, pt. 1, 831.)

The object sought was to deprive such a person of the interposition of the United States in his behalf without affecting his citizenship. A right of citizenship was to be in abeyance during his foreign domicile, and could be resumed when foreign domicile ceased.

In the course of the debate Mr. Jenckes, of Rhode Island, offered the following:

That any citizen of the United States may lose his *national character*, first, by becoming naturalized in any foreign country; second, by undertaking without the permission of this Government the performance of public duties under a foreign government; third, *by making his domicile in any foreign country without intent to return.* But no residence for the purpose of commerce shall be considered as made without intent to return.

SEC. 3. * * * but such protection shall not be accorded to the following class of persons, and the Executive shall not interfere in their behalf after their quality shall have been ascertained:

First. Those who have renounced their citizenship in either of the modes prescribed in the preceding section.

Second. Those who may be guilty of any crime against the laws of any foreign state, committed within its jurisdiction.

Third. Those who, by treason or any other crime against the United States, shall have forefeited their rights as citizens of the United States.

Fourth. *Those who shall have been absent from the United States for more than five years continuously*, and who shall have failed to make return of their income and property for taxation and shall have paid no taxes in the district and State within the United States where they have each had their last domicile

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during each year of such absence, in the manner required by the laws of the United States and of such State.

* * * * * * *

Seventh. *Those naturalized citizens who shall return to the country of their birth with intent to resume a domicile therein*, which intent shall be presumed from five years' continuous residence in the native country of any such naturalized citizen, or from the establishment of any business therein which requires his personal attention, and which denotes an intention of remaining a permanent resident.

* * * * * * *

SEC. 4. *And be it further enacted*, That any citizen of the United States who shall have lost or renounced his citizenship in either of the modes hereinbefore set forth, may again become entitled to the same by resuming his permanent residence in any State or Territory thereof, and by making declaration of his intent to resume his citizenship in the clerk's office of any court of the United States. (Cong. Globe 71, pt. 1, 968.)

This sought to lay down a rule by which expatriation should be determined, to say what would be its effect, and how citizenship might be resumed, the proposed rules relating to expatriation being taken from the Roman law.

As the debate progressed it threatened to become unduly prolonged, and the Foreign Affairs Committee brought in an amended bill which left out the clause relating to the right of protection, the chairman of the committee stating that it did not then press for consideration and might properly be postponed. The question immediately under consideration was that of the status abroad of American citizens who were not suspected of any intention of remaining there permanently.

The law as passed proclaimed the right of expatriation in the following terms:

Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle, this Government has freely received emigrants from all nations and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subject to foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disallowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation is declared inconsistent with the fundamental principles of the Republic. (Sec. 1999, Rev. Stat.)

This section declared that aliens have a right to become full citizens of the United States, and section 2000, declaring their rights equal with those of native citizens, was its corollary; but the law has always been construed as carrying by implication a declaration of the right of expatriation of Americans as well as foreigners.

Expressed renunciation of American citizenship is, however, extremely rare; but the class of Americans who separate themselves from the United States and live within the jurisdiction of foreign countries is becoming larger every year, and the question of their protection causes increasing embarrassment to this Government in its relations with foreign powers.

Immigration to the United States has of recent years reached proportions hitherto unheard of, and many of these immigrants will become naturalized citizens of the United States. Naturalized citizens are more apt to go abroad than native citizens. Having already changed their domicile, they are more apt to change it again. They come with the flood of prosperity and depart with it, and the number

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of American citizens outside of the United States, already large, must for these and many other reasons increase in the future. One reason why the attempts which have been made in the past to secure a legislative definition of expatriation have failed is undoubtedly because the necessity has been slight in comparison with the necessity which now exists. It is the duty of the Executive to protect every American citizen while he is abroad from unjust and unlawful molestation, but it is not his duty to protect an American from just punishment for violating any law of a foreign country, and the refusal of protection is not necessarily a denial of American citizenship.

There have been numerous instances of the refusal of the passport, which is now the only document issued by the Executive in authentication of citizenship and right to protection, to citizens of the United States because of suspected intention to put the document to improper uses. In 1885 passports were refused to Mormon missionaries, who, the Secretary of State was convinced, went abroad to obtain emigrants to the United States who would upon their arrival practice polygamy (Moore's Digest, III, 921), and on July 31, 1906, the Secretary of State instructed the agent and consul-general at Cairo to refuse a passport to an American who was engaged in plots to assassinate the Sultan of Turkey and desired to travel for this purpose. The most common reason for refusing a passport is, however, that the person refused is permanently resident abroad and does not intend to return to the United States. The ground of the refusal is that he has so ordered his life that it is made impossible for him to perform the duties of a citizen of the United States, having placed himself where he can not protect and defend the United States.

It is held that the duties of a citizen toward the state and of the state toward a citizen are reciprocal obligations, and that the state is not bound to protect one who can not protect it. In refusing protection to a person who is resident abroad without intention of returning to this country one of his rights of citizenship is withdrawn; but if his intention changes and he returns to the United States to reside he may assume at once his right to protection; and, upon satisfying the Secretary of State of his intention to return, he may, if he goes abroad again, receive this Government's document of protection. He may thus really play fast and loose with his nationality, resuming to-morrow rights which he lost yesterday.

When and under what circumstances it is permissible to assume that the conditions have arisen which require the withdrawal of protection are matters left wholly to the discretion of the Executive, and he has no statute to guide him or support him.

It is difficult to determine when those who have been absent from the United States for a long time and who give no tangible evidence of an intention of returning should be left without protection. When they are refused they are aware that it is in the discretion of the Executive to accord them protection; they are aware that the policy toward them has not been stable and that one official may grant what another has refused. They do not accept, therefore, a refusal as final, but strain their energies to induce a change of decision, and their cases remain open while their status remains undefined. It seems to be clear that these people have by their own act worked their own expatriation, and that their status should be put beyond the uncertainty or fluctuations of executive policy by a declaratory law.

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The presumption of the law, with respect to residence in a foreign country, especially if it be protracted, is that the party is there "animo manendi," and it lies upon him to explain it. (Van Dyne on Citizenship, 273.)

Daniel Webster, when Secretary of State, in a report to Congress, December, 1851, said:

The general rule of public law is, that every person of full age has a right to change his domicile, and it follows that when he removes to another place with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile, and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period.

The Supreme Court of the United States has decided "that a person who removes to a foreign country, settles himself there and engages in trade of the country, furnishes by these acts such evidence of an intention permanently to reside in that country as to stamp him with its national character," and this undoubtedly is in full accordance with the sentiments of the most eminent writers as well as those of other high judicial tribunals on the subject. (Opinions of the Principal Executive Officers, etc., p. 22.)

There can be no dispute that the most certain evidence of intention of expatriation from a country is departure from it with intent not to return. The parent laws of our citizenship and naturalization laws were the Virginia laws of 1779 and 1782, which were drawn up by Thomas Jefferson, who recommended the enactment of the Federal law of 1802, upon which our system of naturalization rests. The Virginia law of 1779 is notable because it contained a provision for expatriation in the following terms:

That whensoever any citizen of this commonwealth shall by word of mouth in the presence of the court of the county wherein he resides, or of the general court, or by deed in writing under his hand and seal, executed in the presence of three witnesses, and by them proved in either of the said courts, openly declare to the same court that he relinquishes the character of a citizen *and shall depart the commonwealth*, such person shall be considered as having exercised his natural right of expatriating himself, and shall be deemed no citizen of this commonwealth from the time of his departure. (Chap. IV, vol. 10, p. 129, Hening's Stats. at Large.)

Before the right of expatriation was generally recognized by the courts of the United States it was held that if it existed permanent departure from the United States was the proof of it. In 1822 the Supreme Court, in the Santissima Trinidad case, said, through Judge Story:

Assuming, for the purpose of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country, as to which we give no opinion, it is perfectly clear that this can not be done without a bona fide change of domicil under circumstances of good faith.

That is to say, if it can be done it can be done by a bona fide change of domicile.

As early as 1795, in a case involving the expatriation of a citizen of the United States, the Supreme Court said (the opinion of Mr. Justice Paterson):

A statute of the United States relative to expatriation is much wanted. * * * Besides ascertaining by positive law the manner in which expatriation may be effected would obviate doubts, render the subject notorious and easy of apprehension, and furnish the rule of civil conduct on a very interesting point. (3 Dall., 154.)

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President Grant, in his annual message of December 5, 1876, said:

The United States has insisted upon the right of expatriation, and has obtained, after a long struggle, an admission of the principles contended for by acquiescence therein on the part of many foreign powers and by the conclusion of treaties on that subject. It is, however, but justice to the government to which such naturalized citizens have formerly owed allegiance, as well as to the United States, that certain fixed and definite rules should be adopted governing such cases and providing how expatriation may be accomplished.

While emigrants in large numbers become citizens of the United States, it is also true that persons, both native born and naturalized, once citizens of the United States, either by formal acts or as the effect of a series of facts and circumstances, abandon their citizenship and cease to be entitled to the protection of the United States, but continue on convenient occasions to assert a claim to protection in the absence of provisions on these questions. * * * The delicate and complicating questions continually occurring with reference to naturalization, expatriation, and the status of such persons as I have above referred to induce me to earnestly direct your attention again to these subjects.

These are merely examples of judicial and executive recommendations on the subject, which could be multiplied, the last one being in the annual message of President Roosevelt in 1904.

IV.

The fourth recommendation is self-explanatory. If one who becomes an American citizen thereby experiences a new political birth, one who loses American citizenship is in the same position as an alien and must do the things which are required of an alien before he can become an American citizen.

V.

The fifth recommendation is declaratory of a principle of public law which should be placed upon the statute books, so that no doubt can ever be raised on a point which may be vital to the United States. "The duty of a citizen when war breaks out," said the Supreme Court in 1856 (5 Wal., 408), "if it be a foreign war and he is abroad, is to return without delay," and it would seem to be equally evident that such is his duty if his Government is threatened by domestic insurrection. In time of war, domestic or foreign, the Government should be able to control the services of every citizen, and the right of changing allegiance should not exist when the State is in peril. In his Elements of International Law Halleck declares that (p. 133) "the right of voluntary expatriation exists only in time of peace and for lawful purposes."

In 1873, in the notable letters from the heads of Executive Departments to President Grant on the subject of protection and expatriation, Mr. Richardson, then Secretary of the Treasury and afterwards chief justice of the Court of Claims, said:

The conclusion from it all is that a citizen of the United States *in time of peace, not deserting a public trust* nor being a fugitive from justice, by renouncing his allegiance to this and becoming in good faith a citizen of another country, in accordance with the laws thereof, is denationalized.

Mr. Fish, Secretary of State, said:

It (expatriation) can not be exercised by one while residing in a country whose allegiance he desires to renounce nor during the existence of hostilities; no subject of a belligerent can transfer his allegiance or acquire another citizenship, as the desertion of one's country in time of war is an act of criminality, and to admit the right of expatriation, "flagrante bello," would be to afford a cover to desertion and treasonable aid to the public enemy.

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IV. EFFECT OF NATURALIZATION UPON STATUS OF WIFE AND MINOR CHILDREN.

RECOMMENDATIONS AND OBSERVATIONS.

Recommendations.

1. That an American woman who marries a foreigner shall take during coverture the nationality of her husband; but upon termination of the marital relation by death or absolute divorce she may revert to her American citizenship by registering within one year as an American citizen at the most convenient American consulate or by returning to reside in the United States if she is abroad; or if she is in the United States by continuing to reside therein.

2. That a foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain her American citizenship upon termination by death or absolute divorce of the marital relation if she continues to reside in the United States, unless she makes formal renunciation of such citizenship before a court having jurisdiction to naturalize aliens; and if she proceeds abroad she may conserve American citizenship by registering within a year as an American citizen before the most convenient American consulate.

3. A minor and nonresident child born without the United States of alien and nonresident parents shall be deemed a citizen of the United States by virtue of the naturalization of the parents, provided, however, that such naturalization take place during the minority of such child; and provided further, that the citizenship of such minor child shall date from the entry of such minor into the United States permanently to reside therein.

Observations.

The question of naturalization by virtue of the marriage relationship came before Congress as early as 1804, with the result that that body passed an act providing—

> that when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die before he is actually naturalized, the widow and children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law.

This, of course, would not cover the case of an alien woman who married an American citizen, naturalized or native. A number of cases having arisen involving this point, as will be seen from those cited below, Congress in 1855 made further provision as follows:

> That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

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This statute seems based directly upon the English statute 7th and 8th Vict., chap. 66, sec. 16, which provides:

And be it enacted, That any woman married or who shall be married to a natural-born subject or person naturalized shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject.

This statute remains practically unchanged at the present time.

(1) NATURALIZATION BY NATURALIZATION OF THE HUSBAND.

Where the wife is a resident.—A number of cases arose under the acts of 1802 and 1804, the general effect of which was well expressed by Chief Justice Simpson in White *v.* White, 1859, 2 Met. (Ky.), 185, 191, when he said:

Naturalization is a personal privilege, and the alien wife does not become a naturalized citizen by the naturalization of the husband. The acts of Congress do not impart to it that effect, nor are we apprised of any law which at the time of the decedent's death conferred upon his wife the right to take real estate by descent in consequence of his naturalization, although such a right has been since conferred upon an alien wife whose husband is a citizen of the United States by the Revised Statutes.

In accordance with this view, it was held that the alien widow of an American citizen could not take dower (Sutliff *v.* Forgey, 1823, 1 Cowen, 89, affirmed in 5 Cowen, 713), and it has since been said that "it has never been supposed since Sutliff *v.* Forgey that her capacity followed that of her husband." (Connolly *v.* Smith, 1839, 21 Wend., 59.) The courts have, morever, been consistent in this ruling and have applied it in favor of native American women whose husbands had become naturalized in a foreign State. (Moore *v.* Tisdale, 1845, 5 B. Mon., 352.)

But the statute of 1855 has been interpreted, properly, it would seem, to declare a new rule, which is, as stated by the court in Kelly *v.* Owen, 1868, 7 Wall., 496, that—

It confers the privileges of citizenship upon women married to citizens of the United States if they are of the class of persons for whose naturalization the previous acts of Congress provide.

And the cases have uniformly taken this position. (Kane *v.* McCarthy, 1869, 63 N. C., 299; Renner *v.* Muller, 1879, 57 How. Pr., 229; People *v.* Newell, 1885, 38 Hun, 78; Kreitz *v.* Behrensmeyer, 1888, 126 Ill., 141.)

Of course the mere taking of the declaratory oath will by the terms of the statute have no such effect if the husband is still living. (Dorsey *v.* Brigham, 1898, 177 Ill., 350.)

Moreover, as stated in Kelly *v.* Owen, for the wife to be so naturalized by the naturalization of the husband she must be one of those classes of persons who may, according to the naturalization laws, become citizens of the United States. (Leonard *v.* Grant, 1880, 5 Fed., 11, 17, s. c. 6 Sawy., 603.)

Where wife is a nonresident.—Certainly, on any logical application of principle, if a resident wife under the early laws was not esteemed a citizen, a nonresident wife must be considered in the same position, and this has been the ruling of the courts. (Kelly *v.* Harrison, 1800, 2 Johns. Cas., 29; Greer *v.* Sankston, 1858, 26 How. Pr., 473.) Since the act of 1855 the matter has been again before the courts in Burton

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v. Burton, 1864, 26 How. Pr., 474, on facts the same as those in the cases cited above, except that in Burton *v.* Burton the widow came to America. The court discussed elaborately the authorities, and in the course of its opinion said:

> In this case, the plaintiff has neither sought to derive the benefit of her husband's naturalization by coming with or following him here, in order to entitle herself to the benefit of a liberal construction in her favor of the act, as suggested, by a residence in this country of any duration prior to her husband's death. Her rights, therefore, as a citizen, depend entirely upon the construction of the section of the statute under consideration, and I am of the opinion that she has no claim upon her husband's estate thereunder. He was not, when he married her, a citizen of the United States, and she was never a resident thereof during his life. On the contrary, she was and continued to be both alien and stranger.
>
> The plaintiff being an alien, and having married an alien, and not having resided in this country prior to her husband's death, has no dower right in the lands of which her husband died seized, under the provisions of the act of the legislature passed in 1845.

But the principle has not been followed in a case where an American woman whose husband became a citizen of a foreign State (Texas) always resided in the United States, the court holding in this case that the wife became a citizen of the foreign State. (Kircher *v.* Murray, 1893, 54 Fed., 617.)

(2) NATURALIZATION BY MARRIAGE TO A CITIZEN.

An alien woman marries an American citizen.—The courts have made no distinction, as to the status of the wife, between those cases in which the woman married an alien who later became a citizen and those in which she married one who was already a citizen, and in the latter situation, no difference is made between cases in which the citizen is a naturalized citizen and those in which he is a native-born citizen.

In the cases of Mick *v.* Mick, 1833, 10 Wend., 379, and Priest *v.* Cummings, 1837, 16 Wend., 617 (cases of dower), the court characterized the widow as an "*alien widow* of a *foreign born citizen*," and so refused her dower. The same holding was made in Currin *v.* Finn, 1846, 3 Denio, 229, though it does not appear whether the husband was a native or naturalized citizen.

But, under the statute of 1855, the courts have changed their rulings and have uniformly recognized the principle that an alien woman by marrying an American citizen becomes thereby herself a citizen. (Knickerbocker Life Insurance Company *v.* Gorbach, 1871, 70 Pa. St., 150; United States *v.* Kellar, 1882, 13 Fed., 82, S. C., 6 Sawy., 603; Kane *v.* McCarthy, 1869, 63 N. C., 299; Kreitz *v.* Behrensmeyer, 1888, 125 Ill., 141; People *v.* Newell, 1885, 38 Hun., 78; Gumm *v.* Hubbard, 1888, 97 Mo., 341.) This has indeed been followed where the husband was foreign born, and depended for his citizenship upon the citizenship of his father (Ware *v.* Wisner, 1883, 50 Fed., 310), and it appears immaterial that at the time of the marriage the parties are not and do not reside in the United States. (Halsey *v.* Beer, 1889, 52 Hun., 366.) The act is held to naturalize a negro under the provisions of the fourteenth amendment. (Broadis *v.* Broadis, 1898, 86 Fed., 951.)

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The general effect of the act of 1855 was well stated in Kelly *v.* Owen, 7 Wall., 498, as follows:

> As we construe this act, it confers the privileges of citizenship upon women married to citizens of the United States if they are of the class of persons for whose naturalization the previous acts of Congress provide. The terms "married" or "who shall be married" do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman who under previous acts might be naturalized is in a state of marriage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers under the act citizenship upon her. The construction which would restrict the act to women whose husbands at the time of marriage are citizens would exclude far the greater number, for whose benefit, as we think, the act was intended. Its object, in our opinion, was to allow her citizenship to follow that of her husband without the necessity of any application for naturalization on her part, and if this was the object there is no reason for the restriction suggested.

To the same effect see Kane *v.* McCarthy (1869, 63 N. C., 299) and Luhrs *v.* Eimer (1880, 80 N. Y., 171).

A native citizen (woman) marries a foreign citizen—A resident foreigner.—In the one case found upon this point (Comitis *v.* Parkerson, 1893, 56 Fed., 556) the husband had taken up a permanent residence in the United States and had established here a business. In holding that by marriage to such an alien the wife did not lose her American citizenship, the court said:

> The question may be generalized thus: Does a woman who was a citizen of the United States, who never intended to leave it and never did leave it, become expatriated and become an alien by marriage with a man who had been a subject of Italy, but who, previous to his marriage, had settled in Louisiana and had forever severed himself from Italy?

The present case is supported by a dictum in Kreitz *v.* Behrensmeyer, supra, to this effect:

> The citizenship of a woman thus acquired [by marriage with a citizen husband] is not lost by the subsequent death of her husband and her afterwards intermarrying with an alien.

These cases should be considered in connection with Pequignot *v.* Detroit, infra, from which it may be distinguished on its facts (and was so distinguished by the court), though the spirit of the two is opposed.

A nonresident foreigner.—Since the courts in the early cases held that the status of an alien woman was not changed by her marriage to an American citizen, they should hold, to be consistent, that the status of an American woman was not changed by her marriage to a foreigner. Such a conclusion was reached in Shanks *v.* Dupont, 1830, 3 Pet., 242. The question arose in two earlier cases, Sewell *v.* Lee, 1812, 9 Mass., 363, and Barzizas *v.* Hopkins, 1824, 2 Randolph, 276. In the first, however, the court expressly refused to decide the question since the defendant had by his plea admitted a capacity to sue, and in the second the decision might have been placed on another ground. (See also Beck *v.* McGillis, 1850, 9 Barb., 35, and Jennes *v.* Landes, 1897, 84 Fed., 13.)

In the most recent case in which the question seems to have been up (Ruckgaber *v.* Moore, 1900, 104 Fed., 947), the court declared that a woman marrying an alien becomes a foreign citizen, provided there "be that withdrawal from her native country, or equivalent act,

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expressive of her election to renounce her former citizenship as a consequence of her marriage."

A naturalized American citizen (woman) marries a foreign citizen.—But one case has been found on this point in which the facts were that an alien of French parentage by her marriage with an American citizen had been deemed, under the act of 1855, to have been naturalized as a citizen. From this husband she was divorced and later married her second husband, an alien Frenchman, who had never even declared his intention to become a citizen. The court held that she was an alien and incompetent to sue in the Federal courts. As already stated, while the court in Comitis *v.* Parkerson, supra, distinguished the two cases by stating that—

> In that case [Pequignot *v.* Detroit] the facts characterizing the residence of the husband and wife may have made it what the public writers term "temporary residence," whereas the intent of the plaintiff and her husband was to remain in the United States always,

yet the spirit of the two cases is opposed, and it may be doubted if both can stand.

It may be stated in conclusion that, if the courts take the position announced in Comitis *v.* Parkerson, and also follow the holdings in such cases as Ware *v.* Wisner, supra; Halsey *v.* Beer, supra (to the effect that an alien woman nonresident marrying a nonresident American citizen becomes thereby an American citizen), and if foreign countries assume the same position we shall have in every case of naturalization by marriage, for which naturalization the statutes of England, France, Germany, and America provide, a case of dual allegiance, because under the rule announced in Halsey *v.* Beer, the King of Italy might insist that the native-born citizen wife of Augustine Comitis became a subject, by that marriage, of Italy, and it must be deemed immaterial, under the decision of Halsey *v.* Beer, that the husband in the Comitis case was a permanent resident of America. From the standpoint of comity and the avoidance of conditions of dual allegiance, the decision in Pequignot *v.* Detroit, seems the sounder.

(3) NATURALIZATION BY NATURALIZATION OF THE FATHER.

Since the statute of 1795 it has been uniformly held that a minor child was naturalized by the naturalization of the father. (Matter of Morrison, 1861, 22 How. Pr., 99; People *v.* McNally, 1880, 59 How. Pr., 500; State *v.* Mims, 1879, 26 Minn., 183; Prentice *v.* Miller, 1890, 82 Cal., 570; Dorsey *v.* Brigham, 1898, 177 Ill., 250; and see Haynes *v.* Ray, 1880, 54 Iowa, 109.)

But the taking of the preliminary steps looking toward naturalization (e. g., making of the declaratory oath) has no such effect. (Berry *v.* Hull, 1892, 6 N. Mex., 643, 660; In re Conway, 1863, 17 Wis., 526; In re Moses, 1897, 83 Fed., 995; and see ex parte Overington, 1812, 6 Binn., 371; unless the father dies before completing his naturalization. Schrimpf *v.* Settegast, 1873, 38 Tex., 96.)

Under the case of Campbell *v.* Gordon, 1809, 6 Cranch., 176, it must be considered immaterial that the child is a nonresident at the time of the parent's naturalization. An extreme case in this point is Young *v.* Peck, 1839, 21 Wend., 389, where the foreign-born child remained in her native country for fifty years, during which time she

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was married to and lived (until his death) with an alien husband. The court held she was a citizen, but the grounds of the decision are not clear. (Ludlam *v.* Ludlam, 1860, 31 Barb., 486, at 491, S. C. affirmed on appeal 26 N. Y., 356.) Obviously it must follow, in view of these decisions, that if the children are resident in America at the time of the father's naturalization they will be considered to be naturalized by that act, and such has been the holding of the courts. (West *v.* West, 1840, 8 Paige, Ch. 433; State *v.* Penny, 1850, 10 Ark., 621; O'Connor *v.* State, 1860, 9 Fla., 215; North Noonday Mining Company *v.* Orient Mining Company, 1880, 6 Sawy., 299; State *v.* Andriano, 1887, 92 Mo., 70, 76.)

It will thus be seen that there are two cases, Campbell *v.* Gordon and Young *v.* Peck, in which the question arose as to whether or not children born abroad and resident there at the time of the naturalization of their parents in America became by that act citizens of the United States. Both cases are peculiar on their facts. In Campbell *v.* Gordon the daughter came to America while she was yet a minor and before the passage of the act by virtue of which she was afterwards declared a citizen. The effect of the judgment was that the statute applied retrospectively. It must be said, however, either that the court considered that the act was intended to cover all aliens whose parents had been naturalized or who had come to America up to the date of the passage of the act, or that residence in America at the time of the perents' naturalization is not necessary. In Young *v.* Peck, as already indicated, the ground of the decision is not clear. Following the argument of the chancellor, it is to be rested on the fact that the father's citizenship was due to the readjustment of allegiances at the end of the war, and that a citizenship so gained is sui generis.

This conclusion, however, that there can be any different kinds of citizenship is not in accord with the determinations made in other cases, for in Crane *v.* Reeder (1872, 25 Mich., 303), that precise question was up before the court. It appeared there that the citizenship of the parent of the person in question was acquired by his continued residence in the United States after the treaty of 1797, in which it was provided, as is usual in such treaties, that all British subjects remaining within the United States beyond a certain time should be deemed to have elected to become American citizens. The court held that citizenship acquired in this manner was in no way different from that acquired in any other way. That citizenship was citizenship, however obtained. With that point out of the case of Young *v.* Peck we are forced to the position that residence in the United States at the time of the naturalization of the parent, or, indeed, during minority, is unnecessary, and that whenever the child comes into this country he is to be treated as a citizen. In all the cases cited subsequent to Young *v.* Peck in which the courts used language to the effect that the minor children must be resident here at the time of the naturalization of the father the fact was that the children had been so resident, and the statement of the court to that effect, therefore, was immaterial, a mere dictum.

This leaves us, therefore, with the following questions open for determination: First, must the child reside in America at the time of the father's naturalization, or is it sufficient that he come to America at any time before he reaches majority? And, secondly, is he to

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be considered a citizen before he acquires a residence in the United States—that is, does he become, as does the wife of one naturalizing himself in America, a citizen by virtue of such naturalization irrespective of the place in which he lives?

It is to clear the law on this point that the recommendations concerning a revision of the statute relating to naturalization by naturalization of the parent are made.

Illegitimate children.—It has been held that an illegitimate child becomes a citizen by the naturalization of his reputed father, who had before naturalization married his mother. (Dale *v.* Irwin, 1875, 78 Ill., 170; and see, as bearing on this point, Bloithe *v.* Ayres, 1892, 96 Cal., 532, and Guyer *v.* Smith, 1864, 22 Md., 239.)

(4) NATURALIZATION BY NATURALIZATION OF MOTHER.

The cases are sufficient to show that where a widow takes out her naturalization papers her minor children become thereby citizens. (Brown *v.* Shilling, 1856, 9 Md., 74.) It is not clear, however, as to just what is the naturalizing power where a widow, having alien children by a former husband, marries an American citizen. In Kreitz *v.* Behrensmeyer, supra, the court said:

> And the children of such a woman (when naturalized by marrying a citizen), under the age of 21 years, become citizens by virtue of her citizenship.

While the cases on this subject are neither numerous nor express, it is, however, settled doctrine that the minor children of a widow are naturalized by the mother's marriage to an American citizen or to one who becomes an American citizen during the minority of the children in question. (See, on this point, U. S. *v.* Kellar, 1882, 13 Fed., 82; Gunn *v.* Hubbard, 1888, 97 Mo., 331; People *v.* Newell, 1885, 38 Hun, 78; Dale *v.* Irwin, 78 Ill., 170, 185; U. S. *v.* Rodgers, 1906, 144 Fed., 711.)

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APPENDIXES.

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APPENDIX I.

CITIZENSHIP OF THE UNITED STATES.

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APPENDIX I.[a]

A.

JUDICIAL DETERMINATIONS OF QUESTIONS OF CITIZENSHIP.

In the preparation of this memorandum the aim has been to collect cases dealing with the fact of citizenship and to omit cases adjudicating the rights and duties of citizens. Whenever it has seemed necessary to gives cases involving these latter subjects, they have been limited as much as possible. Effort has been made to present a fairly full collection of cases bearing on the fact of citizenship, but no attempt has been made to analyze and get out the fundamental theories of citizenship, more than was absolutely necessary for the classification. Indeed, the purpose has been to make merely a classified digest of the cases. Moreover, the classification used has not been adopted with a view to supporting any theory of citizenship, but because it seemed at the same time the most familiar as well as the most scientific. No hesitancy has been felt in the use of dicta, since it has been sought not only to give the express adjudications on the subject, but also the judicial thought on the matter.

It has not been thought advisable to enter into any discussion as to what is citizenship, this question being largely theoretical and one upon which a wide difference of view might exist. It may not, however, be amiss to begin the subject by a quotation from a decision of the Supreme Court defining the word "citizen:"

> The Constitution of the United States, as originally adopted, uses the words "citizen of the United States" and "natural-born citizen of the United States." By the original Constitution every Representative in Congress is required to have been "seven years a citizen of the United States" and every Senator to have been "nine years a citizen of the United States;" and "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President." The fourteenth article of amendment, besides declaring that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," also declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And the fifteenth article of amendment declares that "the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude."
>
> The Constitution nowhere defines the meaning of these words, either by way of inclusion or of exclusion, except in so far as this is done by the affirmative declaration that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." In this respect, as in other respects, it must be interpreted in the light of the common

[a] This compilation aims to present the judicial construction and interpretation of the various sections and provisions of the statutes relating to citizenship and naturalization which have been the subject of judicial decision.

Inasmuch as the naturalization act of June 29, 1906, has not as yet been passed upon by the courts, it is not referred to in the text. It has, however, been printed in the appendix of laws hereunto annexed, so that all the statutes bearing upon the questions of citizenship and naturalization may be included.

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law, the principles and history of which were familiarly known to the framers of the Constitution. (Per Mr. Justice Gray in United States *v.* Wong Kim Ark, 1897, 169 U. S., 649, 654.)

In a subsequent paragraph of the same opinion the court sets forth the two methods by which citizenship of the United States may be acquired. He says:

The fourteenth amendment of the Constitution, in the declaration that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," contemplates two sources of citizenship, and two only: birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization. A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts. (P. 702.)

And in the earlier case of Minor *v.* Happersett (1874), 21 Wall., 162, 167, Mr. Chief Justice Waite made the same classification:

Additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization. This is apparent from the Constitution itself, for it provides that "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President," and that Congress shall have power "to establish a uniform rule of naturalization." Thus new citizens may be born or they may be created by naturalization.

This classification, which, as suggested above, has the merit of being not only scientific, but the one usually followed, has been adopted in this report, and accordingly the matter following will be divided into two parts, "Citizenship by birth" and "Citizenship by naturalization," with a third part discussing more or less briefly the question of "Loss of citizenship, by expatriation or otherwise."

However, before proceeding to a discussion of the subject according to such plan two preliminary questions should be disposed of.

FIRST. STATE AND FEDERAL CITIZENSHIP.

From the very earliest decisions the courts have recognized two citizenships perfectly distinct, and, from some viewpoints, wholly independent one of the other. Indeed, the Constitution itself recognized and provided for such citizenship, Article III, section 2, as does also the language of the fourteenth amendment. (See Slaughterhouse cases, 1872, 16 Wall., 36, 73.[a]) This point, therefore, needs little consideration beyond naming decisions in which the matter was more or less directly adjudicated or referred to. It may be said, however, that certainly as early as 1795 the fact that a man might be a citizen both of a State and of the United States was recognized by the Supreme Court of the United States. (Talbot *v.*

[a] It seems thoroughly well recognized that from these two citizenships there arise two sets of rights, one set being within the protection of the Federal Government under the fourteenth amendment and the other left to regulation by the State. (See Ex parte Kinney, 1879, 3 Hughes, 1, and cases cited; Cully *v.* B. & O. R. R., 1876, id., 536; and also the early case of Corfield *v.* Coryell, 1823, 4 Wash. C. C., 371, 380, where the rights of citizens of the United States are comprehensively but briefly sketched.

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Jansen, 1795, 3 Dall., 133. And see Gassies *v.* Ballon, 1832, 6 Peters, 759.) The principle has received a rather careful statement in the case of United States *v.* Cruikshank, 1785, 92 U. S., 542, 550:

> The people of the United States resident within any State are subject to two governments: one State and the other national; but there need be no conflict between the two. The powers which one possesses the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. * * * This does not, however, necessarily imply that the two governments possess powers in common or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereignties and claims protection from both. The citizen can not complain because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts from disobedience to its laws. In return he can demand protection from each within its own jurisdiction.[a]

As suggested above, the courts have always recognized the distinction between the two citizenships. In Talbot *v.* Jansen, supra, it appeared that provision had been made by a State constitution for renunciation of allegiance to the State. While recognizing the efficacy of this so far as it concerned the State, the Supreme Court held that it had no effect as to the party's allegiance to the United States. Therefore a State citizenship may be lost by renunciation, or, as it appears from Prentice *v.* Brannan, 2 Blatch., 162, by a residence outside the State, without in any way affecting the national citizenship. Moreover, it has been held that one who, during the late rebellion, espoused the cause of the South and maintained his allegiance to the State did not and could not by this act renounce his citizenship of the United States. (Planters' Bank *v.* St. John, 1869, 1 Woods, 585.[b])

While some courts have, indeed, scouted the idea that there can be a citizen of a State unless he be also a citizen of the United States (Lanz *v.* Randall, 1876, 4 Dill., 428), and hence that to become a citizen of a State he must comply with the national naturalization laws, op cit., this result has not always been reached, however, for in the case of In re Wehlitz, 1863, 16 Wis., 443, where the facts before the court were similar to that in the case last cited, the court held that one might be a citizen of a State although not a citizen of the United States, and hence to become a citizen of a State it was not necessary that the national naturalization laws should have been complied with This later seems to be the general view. (See Desbois's case, 1812, 2 Martin, 185; United States *v.* Laverty, 1813, 3 Martin, 733; American Insurance Co. *v.* Canter, 1828, 1 Peters, 511.)

The question of State citizenship, as distinct from national citizenship, is most frequently raised in connection with two classes of cases. First, those in which it is sought to compel State authorities to per-

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[a] This question of dual allegiance is, of course, thoroughly well recognized, and it has been held also that the allegiance to the United States is paramount. (United States *v.* Greiner, 1861, 4 Phila., 396, 402. And see involving this principle, but not deciding questions of citizenship, Cohens *v.* Virginia, 1821, 6 Wheat., 264, 381; Ableman *v.* Booth, 1858, 21 How., 506, 517.)

[b] For other cases bearing on the status of residents in the South during the civil war, see The Peterhoff, 1866, 5 Wall., 28; U. S. *v.* Greiner, 1861, 4 Phil., 396; Hoskins *v.* Gentry, 1865, 12 Duv. (63 Ky.), 285; Zacharie *v.* Godfrey, 1869, 99 Am. Dec., 506, and note.

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mit an applicant to vote on the theory that suffrage is the inalienable right of a citizen, and, secondly, those in which the question to be determined is whether or not a party is a citizen of the United States or of a State within the clauses of the Constitution relating to jurisdiction of the Federal courts.

First. *The right of suffrage.*—While some courts have insisted that such was one of the distinguishing marks of citizenship, if not of national citizenship, then of citizenship of the State (see In re Wehlitz, 1863, 16 Wis., 443), yet the courts almost unanimously have denied that the two had any necessary connection, and that not only might persons who are not citizens exercise the elective franchise (City of Minneapolis *v.* Reum, 1893, 56 Fed., 576), but that citizens as such were not entitled to vote, not even within the provisions of the fourteenth amendment. A number of cases bearing on the subject are collected in a note below.[a]

Second. *The question of citizenship as affecting jurisdiction.*—This point may, for the purposes of this report, be briefly disposed of. In the case of Prentiss *v.* Brannon, 1851, 2 Blatch., 162, already referred to, it appeared that a party had left the United States and had gone to Canada, where he had lived for a number of years. It was held that although he had lost, by such residence, his State citizenship, within the meaning of the constitutional provision which permits citizens of different States to bring suit in the Federal courts, he had not lost his national citizenship. The same result was reached under similar circumstances (except that one party was still resident abroad) in Picquet *v.* Swan, 1828, 5 Mason, 35; and see as to the residence of corporations, Catlett & Keith *v.* Insurance Co., 1826, 1 Paine C. C., 594.[b]

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[a] See holding that the elective franchise is not a necessary incident of citizenship: 1. As to negroes—Smith *v.* Moody, 1866, 26 Ind., 299; United States *v.* Crosby, 1871, 1 Hughes, 448; Anthony *v.* Holderman, 1871, 7 Kans., 50; Van Valkenburg *v.* Brown, 1872, 43 Cal., 42; United States *v.* Petersburg, ——, 3 Hughes, 493; United States *v.* Reese, 1875, 92 U. S., 214; and see Opinions of Justices, 1857, 44 Me., 507. 2. As to women—Spencer *v.* Board, 1873, 8 D. C., 169; United States *v.* Anthony, 1873, 11 Blatch., 200; Minor *v.* Happersett, 1874, 21 Wall., 162; Dorsey *v.* Brigham, 177 Ill., 250; Gougar *v.* Timberlake, 1896, 148 Ind., 38; and see also People *v.* Oldtown, 1878, 88 Ill., 202; also Ware *v.* Wisner, 1883, 50 Fed., 310, holding that women are citizens. 3. As to minors—Lyons *v.* Cunningham, 1884, 66 Cal., 42; and see People *v.* Oldtown, supra. 4. As to Indians, holding that though they may have voted, this did not make them citizens—Laurent *v.* State, 1863, 1 Kans., 313, 315. 5. As to aliens—Spragins *v.* Houghton, 1840, 2 Scam. (3 Ill.), 377; In re Wehlitz, 1863, 16 Wis., 443; United States *v.* Hirschfield, 1876, 13 Blatch., 330; Lanz *v.* Randall, 1876, 4 Dill., 425; City of Minneapolis *v.* Reum, 1893, 56 Fed., 576. An averment in pleading that one was "a citizen and resident" was held not equivalent to a specific charge that he was an "elector"—Blanck *v.* Pausch, 1885, 113 Ill., 60. That the elective franchise is not a right of citizenship is shown also by the fact that the courts have repeatedly sustained legislation which provides for a certain prior residence before voting in the county, town, and precinct. See Anthony *v.* Holderman, 1871, 7 Kans., 50. And for the imposition of other requirements for voting see Anderson *v.* Baker, 1865, 23 Md., 531; People *v.* De La Guerra, 1870, 40 Cal., 311.

[b] In McGregor *v.* McGregor, 1864, 1 Keyes, 133, 136, the question was raised as to whether or not a citizen leaving State A and going into State B, where he became a permanent resident, thereby losing his citizenship of State A, was an alien within the meaning of the statutes and the Constitution relating to jurisdiction of Federal courts. In discussing the matter Denio, J., said:

"The respondent is a native of this State, but, at the time of applying for letters testamentary, was domiciled in the State of Iowa. He was not an

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This same question has frequently arisen with relation to the citizenship of an inhabitant of the District of Columbia, whether such a one was a citizen of a State within the meaning of the Constitution, and the answer has uniformly been in the negative, though the courts have in most cases at the same time either expressly asserted or assumed that the parties were, notwithstanding this, citizens of the United States. (See Hepburn *v.* Ellzey, 1805, 2 Cranch, 445; Reily *v.* Lamar, 1805, 2 Cr., 344; Westcott's Lessee *v.* Fairfield, 1811, Peters C. C., 45; Vasse *v.* Mifflin, 1825, 4 Wash. C. C., 519; Barney *v.* Baltimore City, 1867, 6 Wall., 280; Cissel *v.* McDonald, 1879, 16 Blatch., 150.)

The same result has been reached where the question has arisen in connection with an inhabitant of a Territory. (Corporation of New Orleans *v.* Winter, 1816, 1 Wheat., 91. See American Ins. Co. *v.* Canter, 1828, 1 Peters, 511.) And in Sinks *v.* Reese, 1869, 19 Ohio St., 306, the same ruling was declared with reference to residents of Government reservations.

SECOND. STATUS OF RESIDENTS.

The question must arise as to whether or not one may gain or lose citizenship in the nation by residence in or away from a country. Some phases of this are discussed in connection with questions of expatriation, part 3, but a few preliminary statements seem desirable.

It is entirely clear that one who resides in a country assumes a certain relationship to it which differs from that assumed toward any other foreign nation, and that on its part the nation in which he resides stands in a relationship toward its alien residents different from that which it has toward nonresident aliens. The relationship existing between a country and an alien resident was explained by Mr. Chief Justice Gray in United States *v.* Wong Kim Ark, 1897, 169 U. S., 649, 655, as follows:

> Such allegiance and protection were mutual—as expressed in the maxim, protectio trahit subjectionem, et subjectio protectionem—and where not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom.

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inhabitant of this State, but he was not, in any sense known to the law, an alien. It would be quite preposterous to say that a native-born citizen of this State becomes an alien to its laws by going to reside in another of the States in the Union, or even in a foreign country. (See Ludlam *v.* Ludlam, June term, 1863). * * * The provision of the Federal Constitution which declares that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States, precludes the objection of alienage from being set up in any State against a person born in any of the United States, and constitutes all such persons, for all legal purposes, citizens of each State in the Federal Union. (Art. 4, sec. 2; Lemon *v.* The People, 20 N. Y., 562, 607.) They are not, it is true, resident citizens of any State except the one in which they are domiciled, and can not claim any rights belonging peculiarly to residents out of their own State. But the statutory disability attaches only to such as are both aliens and nonresidents. There is no reason to suppose that the term *alien* was used in this statute in any other than its legal sense. That is, at the same time, its popular meaning, and the word when used simply and without any qualifying language can not have any other signification than the one which the law and common parlance affixes to it. This alleged ground of disqualification can not, therefore, be sustained."

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In the earlier case of Carlyle *v.* United States, 1872, 16 Wall., 147, 154, Mr. Justice Field laid down the controlling principle in these words:

"The rights of sovereignty," says Wildman, in his Institutes on International Law, "extend to all persons and things not privileged that are within the territory. They extend to all strangers therein, not only to those who are naturalized and to those who are domiciled therein, having taken up their abode with the intention of permanent residence, but also to those whose residence is transitory. All strangers are under the protection of the sovereign while they are within his territories, and owe a temporary allegiance in return for that protection."

By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence.[a]

This expression is approved in Radich *v.* Hutchins, 1877, 95 U. S., 210. And see Yick Wo *v.* Hoffman, 1885, 118 U. S., 356.

These statements, while clear as to the general principle controlling, leave, however, unsettled certain other and specific questions.

In the first place, the courts have held that the law presumes that all persons who live among us are citizens until the contrary is shown. (State *v.* Beackmo, 1843, 6 Blackf., 488; Lister *v.* Wright, 1842, 2 Hill, N. Y., 320.) Consequently where a party was known to be born here, although it is not shown that his father, who was foreign born, was not an alien, and although during the party's infancy his father moved out of the country, still the party was considered a citizen. (Campbell *v.* Wallace, 1841, 12 N. H., 362.[b]) The same principle was applied under the treaty of peace, in connection with persons who were shown to be domiciled in America before the close of the Revolution with a continuous residence afterwards. (Moore *v.* Wilson, 1857, 10 Yerger, 406.) And in Molyneaux *v.* Seymour, Fanning & Co., 1860, 30 Ga., 440, 441, Lumpkin, J., said:

All persons who are found within the limits of government, whether their residence be permanent or temporary, are to be deemed, so far, citizens or subjects thereof, as that the right or jurisdiction, civil or criminal, will attach to such persons.

Moreover, one alleging the alienage of a party must prove it. State *v.* Haynes, 1880, 54 Ia., 169.

Another principle has, however, been laid down by the cases that where the original status of a party in an action is shown, this is presumed to continue if there be no evidence of the denaturaliza-

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[a] See for an elaborate discussion of the rights of aliens as affected by treaties, Rixner's Succession, 1896, 32 L. R. A., 177, and note.

[b] Of course, under our present statutes, the party having been born in the United States was a citizen by birth, and unless it was shown that he had at the time of coming of age elected to consider himself a subject or citizen of the country to which his father had migrated, he would still be considered an American citizen.

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tion or naturalization. In Hauenstein *v.* Lynham, 1879, 100 U. S., 483, 484, Mr. Justice Swayne expressed this principle thus:

> There is no proof that he denationalized himself or ceased to be a citizen and subject of Switzerland. His original citizenship is, therefore, to be presumed to have continued.[a]

And see also Hogan *v.* Kurtz, 1876, 94 U. S., 773; City of Minneapolis *v.* Reum. 1893, 56 Fed., 576; Bode *v.* Trimmer, 1890, 82 Cal., 512, 517; Miller *v.* Prentice, 1889, 82 Cal., 104; id., 575 (moreover the party in this last case swore that he had been naturalized and had lost his papers); Belcher *v.* Farren, 1891, 89 Cal., 73; White *v.* White, 1859, 2 Met. (Ky.), 185.

The fact of long-continued residence should, of course, make no difference on this question, and it has been so held. Jackson *v.* Wright, 1809, 4 Wend., 75 (ten years' residence). The principle has also been applied where a naturalized or native-born American citizen has denaturalized himself and then has returned to the United States. In such case the courts have held that the party had acquired an alien citizenship and continued to be an alien although subsequently returning to and residing in this country. (Green's Son *v.* Salas, 1887, 31 Fed., 106, citing and relying on Hauenstein *v.* Lynham, supra; Alsberry *v.* Hawkins, 1839, 9 Dana, 177.) Another interesting case in which the doctrine was applied is State *v.* Salge, 1865, 1 Nev., 455, 458, where the defendant called in question the alienage of one of the jurors before whom he was to be tried. It appears that the juror in question—

> was born in the province of Canada, and lived there until he was 24 years of age. He had been told that his father was a citizen of the United States prior to removing to Canada, which was before his (the juror's) birth, and that he never had any knowledge that his father became a citizen of Canada. He also stated that he did not know of which country his father claimed citizenship; that his residence and home was in Canada so long as he knew anything about it, and that he (the juror) had never been naturalized as a citizen of the United States.

The defendant's challenge of the juror was allowed.

Where, as in Miller *v.* Prentice, supra, a change of allegiance is alleged this, of course, must be established as any other fact. (Jones *v.* McMasters, 1857, 20 How., 8, 20.)

A number of cases have come up involving the principle stated in Jackson *v.* Wright, supra, the fact of long-continued residence, among which are three that arose just after the Revolution. In one the alien whose citizenship was being considered had resided in New York as a prisoner of war from September, 1776, to January, 1777. It was urged that this made him a citizen of that Commonwealth, but the court found to the contrary. (Jackson *v.* White, 1822, 20 Johns., 313.) Two years after, in the second case, the question came up as to whether or not continuous residence after the Revolution by a soldier of Burgoyne's army made him a citizen, and the court found that it did (Commington *v.* Springfield, 1824, 2 Pick., 394); and a similar result was reached where the party in question had been a deserter from the British army; see note to Commington *v.* Spring-

[a] Chief Justice Marshall in Blight *v.* Rochester, 1822, 7 Wheaton, 535, expressed the same idea, though the citizenship particularly before him seems to have been State and not national.

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field. It seems that in neither of these cases was the result reached on an interpretation of the treaty. In People *v.* Riley, 1860, 15 Cal., 48, the court of that State declared that residence and service as a soldier were not sufficient to confer citizenship.

The courts have consistently held also that residence in a foreign country by a naturalized American has no effect upon such person's citizenship. The question came up under a rather remarkable state of facts in Young *v.* Peck, 1839, 21 Wend., 389. It appeared in this case that the party in question was the daughter of one who after her birth became a naturalized American citizen. She was born abroad, in Scotland, in 1769; she lived abroad until 1830. She married in Scotland (probably before she became of age) a British subject with whom she lived until his death, when she came to America. The court held that neither her residence nor her marriage had any effect on her citizenship within the act of 1802. This case was affirmed on appeal to the court of errors in 26 Wend., 613. For an application of the same principle see Ware *v.* Wisner, 1883, 50 Fed., 310; State *v.* Adams, 1876, 45 Iowa, 99; Beck *v.* McGillis, 1850, 9 Barb., 35. See also, generally, Brown *v.* United States, 1869, 5 Court of Claims, 571, 575; Murray *v.* McCarty, 1811, 2 Munf., 393, 397.

A number of interesting cases have arisen touching the point whether or not one residing in this country before the Revolution became an alien by either fleeing the country on the outbreak of the war or by taking refuge with the British army. In Inglis v. Sailors' Snug Harbor, 1830, 3 Pet., 99, 120, Chief Justice Marshall said:

> The settled doctrine of this country is, that a person born here, who left the country before the Declaration of Independence and never returned here, became thereby an alien, and incapable of taking lands, subsequently, by descent, in this country.

Accordingly, it was held that where the defendant, born in the colony of New York in 1760, of Irish parents, went to Ireland to be educated in 1771, was educated and served his apprenticeship there, and returned to the United States in 1795, he was held not to be a citizen. (Hollingsworth *v.* Duane, 1801, Wall. C. C., 51. And see Trimbles *v.* Harrison, 1840, 1 B. Mon., 140.) In Coxe *v.* Gulick, 1829, 5 Halstead (N. J.), 328, an opposite result was reached. The principle itself was well stated in United States *v.* Gillies, 1815, 1 Pet. C. C., 159, 161, where Washington, J., said:

> It is true that a man may obtain a foreign domicil which will impress upon him a national character for commercial purposes, and may expose his property found upon the ocean to all the consequences of his new character in like manner as if he were in fact a subject of the government under which he resides. But he does not on this account lose his original character or cease to be a subject or citizen of the country where he was born and to which his perpetual allegiance is due.

The principle was somewhat more fully stated in the earlier case of *The Venus*, 1814, 8 Cranch, 253, 280, where Chief Justice Marshall laid down the doctrine as follows:

> But this national character which a man acquires by residence may be thrown off at pleasure by a return to his native country, or even by turning his back on the country in which he has resided on his way to another. To use the language of Sir W. Scott, it is an adventitious character gained by residence and which ceases by nonresidence. It no longer adheres to the party from the moment he puts himself in motion, bona fide, to quit the country sine animo revertendi. *The Indian Chief*, 3 Rob., 12, 17. The reasonableness of this

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rule can hardly be disputed. Having once acquired a national character, by residence in a foreign country, he ought to be bound by all the consequences of it until he has thrown it off, either by an actual return to his native country or to that where he was naturalized, or by commencing his removal, bona fide and without an intention of returning. If anything short of actual removal be admitted to work a change in the national character acquired by residence, it seems perfectly reasonable that the evidence of a bona fide intention to remove should be such as to leave no doubt of its sincerity. Mere declarations of such an intention ought never to be relied upon when contradicted, or, at least, rendered doubtful by a continuance of that residence which impressed the character. They may have been made to deceive; or, if sincerely made, they may never be executed. Even the party himself ought not to be bound by them, because he may afterwards find reason to change his determination, and ought to be permitted to do so. But when he accompanies those declarations by acts which speak a language not to be mistaken and can hardly fail to be consummated by actual removal, the strongest evidence is afforded, which the nature of such a case can furnish.[a]

But the courts seem universally to have drawn a clear distinction between citizenship and this sort of domicile. As to the character of the domicile which a merchant acquires who resides and trades in a foreign country, see *The Friendschaft*, 1818, 3 Wheat., 13, 52; *The Frances*, 1814, 8 Cranch, 335. Of course, if, in addition to acquiring this domicile, the party also takes an oath of allegiance to the sovereign of the country in which he resides, he is, while residing in that country, a subject of the same, and is not entitled to the protection of his first government and is entitled to the commercial privileges of his second. See the *Charming Betsy*, 1804, 2 Cranch, 64; Stoughton *v.* Taylor, ———, 2 Paine C. C., 655, 661. As will be pointed out more fully later, the foreign domicile of an American citizen has no effect upon the citizenship not only of himself, but of his children, and that even though they may be children by an alien mother. Ludlam *v.* Ludlam, 1860, 31 Barb., 486.

The domiciliary status received a number of important adjudications in connection with our Chinese exclusion acts. It seems to have been well settled, under the earlier statutes, that a Chinaman who had acquired a domicile in this country and then went to his native country on a temporary visit stood, on his reseeking entry into this country, on a different basis from one entering for the first time. In re Ah Ping, 1885, 23 Fed., 329; Lau Ow Bew *v.* United States, 1892, 144 U. S., 47. But the more stringent statutes passed since that time have been interpreted to mean that this right may be withdrawn by Congress. See Chinese Exclusion case, 1888, 130 U. S., 581; Lem Moon Sing *v.* United States, 1895, 158 U. S., 538; In re Tom Mun, 1888, 47 Fed., 722; In re Chew Heong (1884), 10 Sawy., 361. That a party entering this country after having acquired a previous domicile stood on a different footing from a new

[a] The question of domicile thus raised can not be covered in this report. It seems sometimes to have been treated as if it were citizenship. (See the remarks of Story, J., in *The Dos Hermanos*, 1817, 2 Wheat., 78, 96, in which he used this language:

"In respect to the domicil of Mr. Green there is certainly much reason to doubt if it would be sufficient to protect him, even if he could show himself at the time of the capture a citizen of Carthagena, for if upon his return to New Orleans after the war he acquired a domicil there (of which the circumstances of his becoming the owner of a privateer in that port affords a strong presumption) he became a redintegrated American citizen, and he could not by an emigration afterwards, flagrante bello, acquire a neutral character so as to separate himself from that of his native country."

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emigrant was also decided in the case of In re Pangara, 1892, 51 Fed., 275.

Cases have also held that the domicile of the origin is not lost with long residence abroad, even where there is doubt that the party had any fixed intention of returning. White *v.* Brown, 1848, 1 Wall. Jr., 217. But see Ex Parte Blumer, 1865, 27 Tex., 734.

PART I.—CITIZENSHIP BY BIRTH.

CHAPTER I.—CHILDREN BORN WITHIN THE TERRITORY OF THE UNITED STATES.

SECTION 1.—*Of inhabitants not aliens.*

A. Indians.—In discussing the question of citizenship of the Indians, it seems advisable first to treat somewhat at length of their status generally and of their amenability to Federal and State law, because their position seems to be entirely unique, and unless this is in mind the ruling of the courts on matters of pure citizenship seem out of harmony with the general law on this subject.

The Constitution of the United States contains two references to Indians. Article I, section 2, in providing for the distribution of Representatives and direct taxes, excludes "Indians not taxed." Article I, section 8, provides that Congress should have power to regulate commerce "with the Indian tribes." But in neither place is the relationship which is to exist between the Indians and the Government of the United States or the Indians and the government of the States defined.

From the earliest periods our Government has to a greater or less extent treated them as separate nations, and treaties have been the normal method of regulating our relationships with them.

The question of the status of the Indians was brought before our Supreme Court at a comparatively early date in the great case of the Cherokee Nation *v.* Georgia, 1831, 5 Pet., 1. The immediate question to be determined was whether or not the Cherokee Nation was a foreign state in the sense which that term is used in that clause of the Constitution, Article III, section 2, which provides that the judicial power shall extend to controversies between a State and foreign states. The opinion was delivered by Marshall, Chief Justice, in the course of which he used the following language:

> Is the Cherokee Nation a foreign state, in the sense in which that term is used in the Constitution? The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our Government plainly recognize the Cherokee Nation as a state, and the courts are bound by those acts.
>
> A question of much more difficulty remains. Do the Cherokees constitute a *foreign* state in the sense of the Constitution? The counsel have shown conclusively that they are not a State of the Union, and have insisted that, indi-

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vidually, they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a state must, they say, be a foreign state; each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is, perhaps, unlike that of any other two people in existence. In general, nations not owing a common allegiance are foreign to each other. The term *foreign* nation is with strict propriety applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else. The Indian Territory is admitted to compose a part of the United States. In all our maps, geographical treatises, histories, and laws it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves, in their treaties, to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees in particular were allowed by the treaty of Hopewell, which preceded the Constitution, "To send a deputy of their choice, whenever they think fit, to Congress." Treaties were made with some tribes by the State of New York under a then unsettled construction of the confederation, by which they ceded all their lands to that State, taking back a limited grant to themselves, in which they admit their dependence. Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned, right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can with strict accuracy be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage; their relation to the United States resembles that of a ward to his guardian. They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants, and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and an act of hostility. These considerations go far to support the opinion that the framers of our Constitution had not the Indian tribes in view when they opened the courts of the Union to controversies between a State or the citizens thereof and foreign states. (a)

(a) The Indian tribes are distinct, independent political communities, retaining the right of self-government, subject to the protecting power of the United States. Worcester *v.* Georgia, 6 Pet., 515. They are not regarded as the owners of the territories which they respectively occupy. It is considered as vacant and unoccupied land belonging to the United States. United States *v.* Rogers, 4 How., 567. But their hunting grounds are as much in their actual possession as the cleared fields of the whites, and their right to its exclusive enjoyment, in their own way and for their own purposes, is as much respected, until they abandon them, make a cession to the Government, or an authorized sale to individuals. Mitchell *v.* United States, 9 Pet., 746. Subject to this right of possession, the ultimate fee is in the Government. They can not cut timber merely for purpose of sale, though if the cutting of timber be merely incidental to the improvement of their land they may dispose of it at their pleasure. United States *v.* Cook, 19 Wall., 591. A grant of alternate sections of land for railroad purposes only operates on public land owned absolutely by the United States, not to such as is set apart for the use of an Indian tribe under a treaty. Railroad Co. *v.* United States, 92 U. S., 733. The Pueblo Indians of New Mexico, however, occupy a different position. By the plan of Iguala they became citizens of Mexico, and by the treaty of Guadalupe-Hidalgo citizens of the United States and of right entitled to all the privileges of citizens. United States *v.* Lucero, 1 New Mexico, 422. The removal of an Indian tribe can only be made by the authority and under the care of the General Government. Fellows *v.* Blacksmith, 19 How., 366; s. c. 7 N. Y., 401. Brightly's note.

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The question came before Chief Justice Marshall a second time in Worcester *v.* Georgia, 1832, 6 Peters, 515, in which it was to be decided whether or not the plaintiff in error, Worcester, a missionary laboring among the Cherokee Indians with the consent of the tribe and with the consent of the United States, might be lawfully removed from the Cherokee country by Georgia authorities acting under a Georgia law. In holding that such an individual could not be so removed the learned Chief Justice again defined the status of the Indian tribes in substantially the same terms.

Since this time the question has been frequently before other courts, and they have adopted and acted upon this view. See particularly Ex parte Kenyon, 1878, 5 Dill., 385; Ex parte Reynolds, 1879, 5 Dill., 304, and see also The Kansas Indians, 1866, 5 Wall., 737; New York Indians, id., 761; Dred Scott *v.* Sandford, 1856, 19 How., 403; Elk *v.* Wilkins, 1884, 112 U. S., 94.[a]

Following out to its logical conclusion their ruling that the Indian nations were not for purposes of jurisdiction under the Federal Constitution foreign nations, the courts have uniformly and consistently held that for purposes of jurisdiction they were not aliens either. See statement of Marshall, C. J., in Cherokee Nation *v.* Georgia, supra; and the cases of Mackey *v.* Cox, 1855, 18 How., 100, 104 (question as to the right of an administrator appointed in the Cherokee Nation to maintain a suit in the courts of the District of Columbia); Karrahoo *v.* Adams, 1870, 1 Dill., 344 (a suit in a Federal circuit court); Hunt *v.* State, 1866, 4 Kans., 60; Ex parte Reynolds, supra. Where, however, the Indian has forsaken his tribal relations and adopted civilized ways, it has been said he is a citizen for purposes of jurisdiction; ex parte Kenyon, supra; and see Hatch *v.* Ferguson, 1893, 57 Fed., 959. Moreover, it seems that whatever his habits of life, he will be regarded as a person within the meaning of the habeas corpus acts; United States *v.* Crook, 1879, 5 Dill., 453; In re Sah Quah, 1886, 31 Fed., 327.

On the other hand, there runs through the reports the idea that "it is the right and duty of the Government itself to maintain such suits as may be necessary for the protection of the rights of the Indians;" In re Celestine, 1902, 114 Fed., 551.[b]

The amenability of the Indians to our laws must be viewed from the standpoint of both Federal and State law; and it must be said at the outset that for definite information in a particular case as to the rights both of the Government and of the Indians, reference must be made to the individual treaties with the tribe in question or to the general statutes. However, the powers which have been exercised by the two governments under treaty rights, reserved and extended, will be suggested by the cases cited below.

First. The Federal law. Cause may arise to apply the Federal laws either in Indian country or in a State or Territory, either within

[a] Under a statute which provides "that the eastern band of Cherokee Indians, by that name and style, be, and they are hereby, authorized to institute and carry on a suit or suits in law or equity," it was sought to have this band considered a corporation. The court expressed the opinion that the statute either recognized or conferred a corporate capacity in the Indians as a collective tribe or body. In United States *v.* Boyd, 1897, 83 Fed., 547, the same suggestion was made, but was not approved.

[b] And see statement to the effect that the United States acts as a guardian and trustee for the Indians. U. S. *v.* Winans, 1896, 73 Fed., 72.

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or without the limits of a reservation. The term "Indian country" has been defined as "country belonging to the Indians, occupied by them, and to which the Government recognized them as having some kind of title or right;" United States *v.* Leathers, 1879, 6 Sawy., 17, 23, commenting on the statute of July 22, 1790 (1 Stat., 137). Into this country it has been held the internal-revenue laws run, Cherokee Tobacco, 1870, 11 Wall., 616 [see United States *v.* Tobacco Factory, 1 Dill., 264]; likewise the laws governing trade with the Indians, and that for this purpose a reservation in the State of Nevada is Indian country, United States *v.* Leathers, supra; so as to laws for punishments of murder between white men, United States *v.* Rogers, 1846, 4 How., 567; unless the Indian territory is within the limits of one of the States, United States *v.* Bailey, 1834, 1 McLean, 234, discussed in United States *v.* Yellow Sun, 1870, 1 Dill., 271, 279; and a State court does, in such a case, have jurisdiction, United States *v.* Ward, 1863, McCahon, 199; unless the crime is committed between two Indians, United States *v.* Kagama, 1886, 118 U. S., 375.

It is immaterial as to Federal jurisdiction in cases of murder that one of the parties is an Indian by adoption, because in the statutes excepting such Indian offenders from jurisdiction the term "Indian" is said to be descriptive of a race. (Westmoreland *v.* United States, 1895, 155 U. S., 545.) The constitutional power of Congress to regulate commerce with the Indian tribes extends over Indians in territory once part of a reservation, but now a county of a State (United States *v.* Forty-Three Gallons of Whisky, 1876, 93 U. S., 188); and, indeed, such laws are said to apply to the Indian wherever he is found, without reference to State control. (United States *v.* Holliday, 1865, 3 Wall., 407, followed in United States *v.* Osborn, 1880, 2 Fed., 58; see also United States *v.* Osborn, 1880, 6 Sawy., 406; approved in United States *v.* Boyd, supra, to the same effect.) The general theory underlying this ruling is well stated in United States *v.* Forty-Three Gallons of Whisky, supra. In Kansas Indians, 1866, 5 Wall., 737, and New York Indians, id., 761, it was declared that their treaty rights protected land held in severalty by them although within the territorial limits of the respective States.

Moreover, it seems sufficiently clear that the Central Government may authorize Territorial courts to take jurisdiction of crimes, including murder, when committed within the territorial jurisdiction of the court, although the precise place where the crime was committed is not alleged. (Gon-Shay-Ee, Petitioner, 1889, 130 U. S., 343.) But an earlier case held, under another statute, that jurisdiction in a civil case involving the title to real estate was not vested in such a court. (Langford *v.* Monteith, 1880, 102 U. S., 145.)

The case of In re Sah Quah (1886), 31 Fed., 327, is of considerable interest and importance. An Alaskan Indian, held as a slave and chattel by other Indians, sought to regain his freedom. The respondent set up that Alaska was essentially Indian country, that the laws of the Indians therefore controlled Indian relationships, the Government having therefore no right to interfere, and that slavery had from time immemorial been recognized amongst them. But the court, examining the history of the Government's relationships with the Indians, concluded that they were not tribes, but patriarchal bodies; that their independent existence as tribes had never been recognized; and that the Congressional statute of 1885 giving to the

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Federal courts jurisdiction of specified offenses extended over the Indians in Alaska, and therefore the Indians were amenable to Federal laws, and slavery could not be tolerated. In the course of his opinion he said that, though dependent upon and subject to our laws, "they are not citizens within the full meaning of that term."

Second. The State law. It is well settled that in proper cases a State may extend its jurisdiction over Indians. In the case of George Peters, 1801, 2 Johns. Cas., 344, an Indian immigrant from New England was tried for the murder of his wife, the court holding him subject to its jurisdiction (the defendant having abandoned his tribal relations), the court expressly distinguishing this from a case where the Indian accused was a member of a tribe permitted to govern its own internal affairs. In 1810 a New York court interfered to control the disposition of land by an Indian, the land having been given to him for services in the Revolution. (Jackson *v.* Wood, 1810, 7 Johns., 290; and for other cases see reporter's notes to the principal case.) In Jackson *v.* Goodall (1822, 20 Johns., 188) the court declared in general terms that Indians were subject to the jurisdiction of State tribunals (s. c. on appeal, id., 693). But these cases were all of an exceptional character. See also Murray *v.* Wooden, 1837, 17 Wend., 531 (approving Goodall *v.* Jackson), in which a deed executed by an individual Indian was said not to be within the statute prohibiting grants of land by Indians, unless by treaty of convention entered into pursuant to Constitution of United States.

A State may provide that no one shall settle on Indian lands, and one so settling when ejected is deprived of no property within the meaning of treaties or acts of Congress. (State *v.* Dibble, 1858, 21 How., 366; but compare Worcester *v.* Georgia, supra.) States may also exercise power over small isolated reservations, "mixed up with and surrounded by a white population, which carries on with them almost every kind of commerce incident to their condition;" the Federal jurisdiction ceases, it being impracticable to enforce Federal laws. (United States *v.* Cisna, 1835, 1 McLean, 254.) States may not, however, tax Indian lands within their borders New York and Kansas Indians, supra; but see under special conditions Pennock *v.* Commissioners, 1880, 103 U. S., 44), nor a mercantile business (State *v.* Ross, 1834, 7 Yerg., 64). It seems also to be sufficiently clear that State courts have jurisdiction over offenses committed by Indians off the reservation and within its territorial limits. Such was the effect of the decision in People *v.* Antonio, 1865, 27 Cal., 404 (a case of punishment for larceny); Hunt *v.* State, 1866, 4 Kans., 60, and United States v. Yellow Sun, 1870, 1 Dill., 271 (punishment in a State court for murder committed by an Indian off the reservation). And see the case of Peters, supra.

In Hicks *v.* Ewhartonah, 1866, 21 Ark., 106, and Taylor *v.* Drew, id., 485, the State court affirmed its jurisdiction over contracts entered into by Indians. But see, in this respect, Hastings *v.* Farmer, 1850, 4 N. Y., 293, where an opposite result was reached under a State statute.

This brief survey of the status of Indians, and of the State and Federal jurisdiction over them, is sufficient to show the complexity of the Indian problem and the difficulties to be expected in meeting questions of citizenship.

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While, as already shown, the courts have uniformly declared that Indians are not aliens, they have just as uniformly held that they are not citizens, notwithstanding birth within the territorial limits of the United States.

In United States *v.* Shanks, 1870, 15 Minn., 369, 380, the court held that one Hole in the Day, an Indian of unmixed blood, chief of the Chippewas, though holding land in fee from the Government, and though he had adopted ways of civilized life, had yet not been a citizen of the United States, and administration of his estate could not be granted in a State court. In the course of his opinion the judge said:

> The Indians within our territory have always been considered and recognized by the United States as distinct political communities, and so far as is essential to constitute them separate nations the rights of sovereignty have been conceded to them. Worcester *v.* The State of Georgia, 6 Pet., 515. The Intestate, Indian chief Hole in the Day, therefore, was not a citizen of the State of Minnesota nor of the United States, but belonged to a separate nation, upon whom the laws of the State beyond the territorial limits of the State could have no force; and the Indian reservation, which was in his occupancy, and upon which he resided, was not embraced within the civil jurisdiction of the State.

The court further remarked that if they were obliged, they might find a jurisdiction of the matter in the United States courts.

In another case it was held that an Indian who had left the reservation with the consent of the agent and had for ten years lived off the reservation with a white family as a domestic was not a citizen; and that though he claimed to be a voter in the State of Oregon. United States *v.* Osborne, 1880, 6 Sawy., 406, approved in United States *v.* Boyd, 1897, 83 Fed., 547. In discussing the question whether or not an Indian was within the language of the fourteenth amendment, providing that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," the court said: "But the Indian tribes in the United States, or the members thereof, are not born 'subject to the jurisdiction' of the United States;" and he had previously remarked: "The Indians are not a portion of the political community called the 'people of the United States,' and although not foreign nations or persons, they have always been regarded and treated as distinct and independent political communities." One of the most extreme cases is that of Elk *v.* Wilkins, 1884, 112 U. S., 94, 100, where the plaintiff, an Indian, who had separated himself from his tribe, settled down and became a bona fide resident of the State of Nebraska, in the city of Omaha, and had completely surrendered himself to the jurisdiction of the United States, sought to compel the defendant to register him as a qualified voter. But the Supreme Court, in an elaborately considered opinion, held that he was not a citizen of the United States. Mr. Justice Gray, in delivering the opinion of the court, said:

> The alien and dependent condition of the members of the Indian tribes could not be put off at their own will without the action or assent of the United States. They were never deemed citizens of the United States, except under explicit provisions of treaty or statute to that effect, either declaring a certain tribe, or such members of it as chose to remain behind on the removal of the tribe westward, to be citizens, or authorizing individuals of particular tribes to become citizens on application to a court of the United States for naturalization, and satisfactory proof of fitness for civilized life.

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Upon the direct point whether or not an Indian was entitled to citizenship within the fourteenth amendment, on the ground that he was born within the United States, Mr. Justice Gray expressed himself thus:

> Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more "born in the United States and subject to the jurisdiction thereof," within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States of ambassadors or other public ministers of foreign nations.

Nor, usually, are the Indians in a better position with reference to the States. In Jackson *v.* Goodall, 1822, 20 Johns., 187, it was held that certain of the Oneida Indians were citizens of the State, owing allegiance to the State government, but on a writ of error to the Supreme Court, 20 Johns., 693, this holding was overruled, it being declared that the Indians within the State were not citizens. In State *v.* Managers, 1829, 1 Bailey, 215, citizenship was denied to an Indian admitted to be "a man of excellent character * * * useful to the country both in a military and civil capacity." The same principle was well settled in Massachusetts, as has been repeatedly recognized by their courts (Danzell *v.* Webquish, 1871, 102 Mass., 133), though the disability has more recently been removed by statute (Cooms, petitioner, 1879, 127 Mass., 278; Pells *v.* Webquish, 1880, 129 Mass., 469). Other States have taken the same attitude (Hilgers *v.* Quinney, 1881, 51 Wis., 62).

Citizenship has, however, been frequently conferred upon Indians and Indian tribes by treaty. In the treaty of Guadalupe-Hidalgo it was provided that Mexicans resident in the territory transferred from Mexico to the United States should become citizens of the United States. In accordance with this provision it has been held that Pueblo Indians who were Mexicans under the Mexican law at that time became citizens of the United States (United States *v.* Lucero, 1879, 1 New Mexico, 422; United States *v.* Santistevan, 1874, 1 New Mexico, 583; United States *v.* Joseph, 1876, 94 U. S., 614, approving United States *v.* Santistevan; United States *v.* Ritchie, 1854, 58 U. S., 524). And numerous special statutes have conferred the rights of citizenship in particular instances. See the more important ones collected in Elk *v.* Wilkins, 1884, 112 U. S., 94, and the full collection in Indian Affairs, Laws and Treaties, two volumes, 1903.

A general act of Congress approved February 8, 1887, known as the Dawes bill, provided for the allotment of land to Indians adopting civilized life, with the further provision that each allottee born within the territorial limits of the United States—

> who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States. (24 Stat. L., pp. 388–390.)

This statute has been held to have no application to tribes as such, only to the individuals of the tribes. United States *v.* Boyd, 1896, 83 Fed., 547. But it has been repeatedly held to make citizens of the United States all Indians who bring themselves within its terms. See State *v.* Denoyer, 1897, 6 N. Dak., 566; Ross *v.* Eells, 1893, 56

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Fed., 855; United States *v.* Kopp, 1901, 110 Fed., 160; In re Celestine, 1902, 114 Fed., 541. Special treaties have sometimes contained a similar provision, e. g., the treaty of New Echota, which provided that Indians of the Cherokee tribe who remained in the East might become citizens on abandoning their tribe and adopting civilized methods of life. Cherokee Trust Funds, 1855, 117 U. S., 289, commenting on United States *v.* Boyd, supra.[a]

The status of the Indian woman who marries an American citizen seems not often to have been before the court. In Hatch *v.* Ferguson, 1893, 57 Fed., 959, the court decided that an Indian woman born within the United States, widow of a citizen of the United States, was entitled to prosecute a suit in the Federal court for the State of Oregon against citizens of the State of Washington. The decision is not squarely in point, however, since, under the Dawes bill of 1888, it would seem she might have taken on citizenship by forsaking her tribal relations, as she had done, and in that event, of course, the fact of marriage to a citizen was immaterial. The correct solution of this problem depends, seemingly, first, on the construction of particular treaties, and, second, on the residence of the parties after marriage.

If after marriage the parties reside in the Indian country, the husband subjecting himself to the Indian laws, it seems to be the general rule that in such case the husband may become an adopted Indian, and, of course, under these circumstances, the children will be Indians, not citizens. (See United States *v.* Rogers, and cases cited, infra.) If, however, the wife severs her tribal relations and lives with her husband in a civilized community, adopting civilized habits of life, the children of such a marriage should, under the usual rules, be citizens, not Indians. In Ex parte Reynolds, supra, the question was discussed at some length, and the court, while stating that as between a freeman and a slave the principle of the Roman civil law, expressed in the maxim partus sequitur ventrem, was applied, and so the offspring be a slave, yet a different rule was applied between freemen. He said:

> But by the common law this rule is reversed with regard to the offspring of free persons. Their offspring follows the condition of the father, and the rule partus sequitur patrem prevails in determining their status. This is the universal maxim of the common law with regard to freemen—as old as the common law or even as the Roman civil law, and as well settled as the rule partus sequitur ventrem—the one being a rule fixing the status of freemen; the other being a rule defining the ownership of property—the one applicable to different political communities or states, whose citizens are in the enjoyment of the civil rights possessed by people in a state of freedom; the other defining the condition of the offspring which had been tainted by the bondage of the mother. No other rules than the ones above enumerated ever did prevail in this or any other civilized country. * * * These Indians are freemen.

In accordance with the principles here announced, the court held that a woman whose paternal grandfather was a white man "living in the State of Mississippi and not with an Indian tribe, a citizen of the State of Mississippi and of the United States," was herself a citizen, since her father before her had been one. A result similar in

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[a] It is of interest to note that the tenure by which such land is held from the Government is not changed to a fee simple by the Indian becoming a citizen—United States *v.* Flournoy, etc., Co., 1896, 71 Fed., 576—and it may be added that it has been held that holding land in fee simple does not make an Indian a citizen.—United States *v.* Shanks, supra.

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effect, though not fully to the point, was reached in the earlier case of Davis *v.* Hall, 1818, 1 Nott & McCord, 292, the court there holding that the son of a white father and Indian mother might inherit lands from the father, although the son was born while his father and mother resided with the Indian tribe. The result reached in this case seems entirely in accord with the rules usually controlling in cases of marriage between citizens of the United States and those not citizens.[a] (See section Citizenship by marriage, infra.)

While the courts have generally been a unit in following Elk *v.* Wilkins, supra, to the effect that national citizenship may not be acquired by an Indian merely forsaking his tribal connections and adopting civilized methods and habits, a different result with reference to citizenship in a State was reached in Hilgers *v.* Quinney, 1881, 51 Wis., 62, where the court held, pursuant to certain provisions in the State constitution, that a person of Indian descent who had abandoned his tribe was a citizen of the State of Wisconsin "by every test known to our constitution and laws." The question in the United States courts, as indicated above, has usually been answered the other way.

The courts have, however, always recognized the right of an Indian to forsake his tribe. In United States *v.* Crook, 1879, 5 Dill., 453, 464, the question arose as to whether or not a part of the tribe of Ponca Indians which, having been removed to Indian Territory, had forsaken that place and returned to their former home and taken up a residence with a kindred tribe could be arrested at the instance of the Government and returned to Indian Territory. In passing upon a writ of habeas corpus sued out by these Indians, the court made the following remarks:

> What is here stated in this connection is mainly for the purpose of showing that the relators did all they could to separate themselves from their tribe and to sever their tribal relations, for the purpose of becoming self-sustaining and living without support from the Government. This being so, it presents the question as to whether or not an Indian can withdraw from his tribe, sever his tribal relations therewith, and terminate his allegiance thereto, for the purpose of making an independent living and adopting our own civilization.
>
> If Indian tribes are to be regarded and treated as separate but dependent nations, there can be no serious difficulty about the question. If they are not to be regarded and treated as separate, dependent nations, then no allegiance is owing from an individual Indian to his tribe, and he could, therefore, withdraw therefrom at any time. The question of expatriation has engaged the attention of our Government from the time of its very foundation. Many heated discussions have been carried on between our own and foreign governments on this great question, until diplomacy has triumphantly secured the right to every person found within our jurisdiction. This right has always been claimed and admitted by our Government, and it is now no longer an open question. It can make but little difference, then, whether we accord to the Indian tribes a national character or not, as in either case I think the individual Indian possesses the clear and God-given right to withdraw from his tribe and forever live away from it as though it had no further existence. If the right of expatriation was open to doubt in this country down to the year 1868, certainly since that time no sort of question as to the right can now exist.

And see Ex parte Kenyon, 1878, 5 Dill., 385, holding that an adopted Indian may sever tribal relations; Pennock *v.* Commissioners, 1880, 102 U. S., 44, and cases cited under the discussions as to the

[a] The matter has been settled, however, by the Congressional act of 1888, 25 Stat. L., ch. 818.

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authority of United States and State governments over Indians and Indian tribes, supra.

As already stated, certain treaties between the United States and Indian tribes have provided that citizens marrying Indian wives might be adopted into the Indian tribes and become citizens thereof. Here, again, the question seems to depend primarily upon particular treaties, which must in each case be consulted The right of American citizens under such treaties to join the Indian nations and of the Indian nations to adopt such as members of their tribe has been recognized in a number of cases. One of the best-known cases in the law upon this question is that of United States *v.* Rogers, 1846, 4 How., 566, in which the question was whether or not a white man who had married an Indian squaw and had been adopted into the Cherokee tribe could be tried for the murder of another white man similarly adopted, in the courts of the United States, or whether or not he came within a clause in the treaty providing that "crimes committed by one Indian against the person or property of another Indian" should be punished according to the Cherokee laws. The opinion was delivered by Mr. Chief Justice Taney, who stated his opinion as follows:

> We think it very clear that a white man who at mature age is adopted in an Indian tribe does not thereby become an Indian, and was not intended to be embraced in the exception above mentioned. He may by such adoption become entitled to certain privileges in the tribe and make himself amenable to their laws and usages. Yet he is not an Indian, and the exception is confined to those who by the usages and customs of the Indians are regarded as belonging to their race. It does not speak of members of a tribe, but of the race generally, of the family of Indians; and it intended to leave them both, as regarded their own tribe and other tribes also, to be governed by Indian usages and customs. And it would perhaps be found difficult to preserve peace among them if white men of every description might at pleasure settle among them, and by procuring an adoption by one of the tribes throw off all responsibility to the laws of the United States and claim to be treated by the Government and its officers as if they were Indians born.

Ex parte Kenyon, 1878 (5 Dill., 385), presented another question of some considerable interest. In that case Kenyon, a citizen of the United States, had been adopted into the Cherokee Nation. He had married an Indian woman and by her reared a family. On her death he severed his connection with the tribe and moved from the Indian country into the State of Kansas. Later he was indicted for the larceny of a mare belonging to his wife, which he had taken with him when he emigrated to Kansas. The question presented was whether or not his status as an Indian had changed by his abandoning his tribal relations and whether his national citizenship revived. The court held that he was a citizen of the United States and subject to the laws of the State of Kansas, and therefore that a writ of habeas corpus would run to a court of the Cherokee Nation which had taken jurisdiction of the offense and had sentenced him to imprisonment in the Cherokee penitentiary.

This decision is in accord with the statement of Taney in United States *v.* Rogers, supra, who remarked:

> Whatever obligations the prisoner may have taken upon himself by becoming a Cherokee by adoption, his responsibility to the laws of the United States remained unchanged and undiminished.

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In Roff *v.* Burney, 1896 (168 U. S., 218, 222), Mr. Justice Brewer, in delivering the opinion of the court, quoted with approval the above remark of Mr. Chief Justice Taney, stating that—

> the mere fact that a citizen of the United States has become a member of an Indian tribe by adoption may not necessarily cancel his citizenship.

This seems to be the effect of the holding in Ex parte Reynolds, supra. In other words, we seem to have in such cases as these what is usually considered a dual citizenship, if membership in an Indian tribe may be considered citizenship. Where Indians are permitted to adopt persons into their tribe, it is determined that they also have power after such adoption to withdraw their citizenship from the adopted party. To this point was the decision in Roff *v.* Burney, supra.

B. Africans.—The status of free, native-born negroes before the adoption of the fourteenth amendment is no longer of practical importance so far as the negro is concerned, but the subject is too important a one to be omitted without any consideration at all, and it is conceived that a brief survey of the more important cases bearing on that topic will not be wholly without some suggestive value in so far as they throw light upon questions concerning the status of the inhabitants of the Philippines and Porto Rico. Accordingly, a number of cases are outlined below, but it should be said that the cases dealing with the enforcement of the fugitive slave laws have been purposely omitted from consideration.

It seems unnecessary to cite cases for the proposition that slaves were not citizens, since this is sufficiently established by the whole history of the country and the expressions in the Constitution itself.

As to free negroes, there are two lines of authority directly in conflict with a third line midway between.

First. Decisions holding that free negroes were citizens. Cases adjudicated both before and since the civil war have declared that free negroes were citizens. One of the earliest cases to this point is State *v.* Manuel, 1838, 3 Dev. & Bat., 20, 24, in which the court announced the doctrine in the following language:

> According to the laws of this State all human beings within it who are not slaves fall within one of two classes. Whatever distinctions may have existed in the Roman law between citizens and free inhabitants, they are unknown to our institutions. Before our Revolution all free persons born within the dominions of the King of Great Britain, whatever their color or complexion, were native-born British subjects; those born out of his allegiance were aliens. Slavery did not exist in England, but it did exist in the British colonies. Slaves were not, in legal parlance, persons, but property. The moment the incapacity—or disqualification of color—was removed they became persons, and were then either British subjects or not British subjects, according as they were or were not born within the allegiance of the British King. Upon the Revolution no other change took place in the law of North Carolina than was consequent upon the transition from a colony dependent on an European king to a free and sovereign State. Slaves remained slaves. British subjects in North Carolina became North Carolina freemen. Foreigners, until made members of the State, continued aliens. Slaves manumitted here became freemen; and, therefore, if born within North Carolina are citizens of North Carolina, and all free persons born within the State are born citizens of the State. A few only of the principal objections which have been urged against this view of what we considered the legal doctrine will be noticed. It has been said that by the Constitution of the United States the power of naturalization has been conferred exclusively upon Congress, and therefore it can not be competent for any State by its municipal regulations to make a citizen. But what is naturalization? It is

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the removal of the disabilities of alienage. Emancipation is the removal of the incapacity of slavery. The latter depends wholly upon the internal regulations of the State; the former belongs to the Government of the United States. It would be a dangerous mistake to confound them.

The court then pointed out that under their State constitution every freeman who had arrived at the age of 21 and paid a public tax, without regard to color, "claimed and exercised the franchise until it was taken from freemen of color a few years since by our amended constitution." It would thus seem that the ratification of the constitution in North Carolina may have been due in part to the votes of free negroes. This is one of the very strongest opinions holding that free negroes are citizens.[a]

The next case in point of time is that of Tannis *v.* Doe, 1852, 21 Ala., 449, which held that free negro residents of Florida at the time for our purchase became, by virtue of the wording to the treaty, citizens of the United States. On the general question of citizenship of free negroes, of course, this case is of little value.

The next expression on the subject was given in 1857, when the justices of the supreme judicial court of Maine, in answer to an interrogatory addressed to them by the order of the senate (State), under date of March 26, 1857, declared that free negroes of the age of 21 years and upward were, under the laws of Maine, "electors for governor, senators, and representatives." While it will be seen that the decision is not, as expressed, squarely to the point that free negroes are citizens, the decision really went to that extent, since their constitution required that all electors should be male citizens of the United States.

Later, in 1865, the general assembly of Connecticut—

adopted a resolution requesting the judges of the supreme court to convene and give their opinion upon the question "whether a negro is or is not a citizen of the United States within the meaning of that phrase as used in the amendment to the constitution of the State adopted in October, 1845."

The court declared (Chief Justice Hinman not expressing an opinion)—

that, in their opinion, a free colored person born in this State is a citizen of the State and of the United States.[b]

In 1866 the matter came up before a United States circuit court in United States *v.* Rhodes, 1866, 1 Abb. U. S., 28, and the court, after a very elaborate discussion of the cases, concluded that, notwithstanding the Dred Scott case, free colored persons had always been entitled to be regarded as citizens of the United States.

In the same year the question was considered in an Indiana court, in Smith *v.* Moody, 1866, 26 Ind., 299. It is not clear whether the court had in mind the condition of negroes after the fourteenth amendment only. The conclusion was reached, however, that free negroes were citizens.

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[a] It is not clear from the court's language whether or not he considered them merely citizens of the State or citizens of the United States, but the latter seems to have been within his view.

The case of Fable *v.* Fable, 1835, 2 Hill Eq. (S. C.), 378, contains an elaborate consideration, both by counsel and court, on the question of the status of slaves.

[b] See note to this opinion explaining the earlier case of Crandall *v.* State, 10 Conn., 339, in which Daggett, chief justice, in charging the jury, expressed a contrary view.

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These are the most important cases in which the question has come up, in only one of which prior to the civil war, State *v.* Manuel, was there a square decision on a suit pending before the court, that free negroes were citizens.

Second. Decisions holding that free negroes were not citizens. One of the earliest cases on this point is that of Amey *v.* Smith, 1822, 1 Litt. (Ky.), 326. The question was brought up through an action of trespass, assault and battery, and false imprisonment, sued out by the plaintiff, a woman of color, against the defendant. The case turned, among other things, on the point whether or not the plaintiff was a citizen, the court holding that she was not. A distinction was made between the words "citizen" and "subject," the former being made the narrower term. In the course of his opinion the court said:

Prior to the adoption of the Federal Constitution the States had a right of making citizens of any persons they pleased, but as the Constitution does not authorize any but white persons to become citizens of the United States it furnishes a presumption that none others were citizens at the time of its adoption.

The case of Crandall *v.* State, 1834, 10 Conn., 339, in which Daggett, C. J., charged the jury to the effect that a free negro was not a citizen, is the next case in point of time.

In 1838 a Tennessee court gave an opinion upon the matter in State *v.* Claiborne, 1838, 1 Meigs (Tenn.), 331, in which, after examining the question and declaring that under the laws of Tennessee free negroes had few privileges that were common to the white citizens of the State, it used the following language:

How can it be said that he enjoys *all* the privileges of citizens when he is scarcely allowed a single right in common with the mass of the citizens of the State? It can not be; and therefore either the free negro is not a citizen in the sense of the Constitution, or, if a citizen, he is entitled to "all the privileges and immunities" of the most favored class of citizens. But this latter consequence will be contended for by no one. It must then follow that they are not citizens.

In Pendleton *v.* State, 1846, 6 Ark., 509, the plaintiff had been indicted under a local statute which prohibited "the emigration and settlement of free negroes, or free persons of color, into this State." The plaintiff pleaded the second section of the fourth article of the Constitution of the United States, which provides "that citizens of one State shall be entitled to all the privileges and immunities of citizens of the several States." After quoting the remarks of the court in Amey *v.* Smith, supra, the judge continued:

If citizens in a full and constitutional sense, why were they not permitted to participate in its formation? They certainly were not. The Constitution was the work of the white race; the Government, for which it provides, and of which it is the fundamental law, is in their hands and under their control; and it could not have been intended to place a different race of people in all things upon terms of equality with themselves. Indeed, if such had been the desire, its utter impracticability is too evident to admit of doubt. The two races, differing as they do in complexion, habits, conformation, and intellectual endowments, could not nor ever will live together upon terms of social or political equality. A higher than human power has so ordered it, and a greater than human agency must change the decree. Those who framed the Constitution were aware of this, and hence their intention to exclude them as citizens within the meaning of the clause to which we have referred.

In Cooper & Worsham *v.* Mayor, 1848, 4 Ga., 68, the plaintiff applied, under a writ of habeas corpus, for discharge from imprisonment in pursuance to an ordinance of the city of Savannah, which

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provided that each free person of color removing to the city should pay the sum of $100, or in default thereof should be arrested and confined in the city jail until such sum was paid. The court held that the ordinance was repugnant to the laws of the State, and so void, but began its opinion by declaring that—

> free persons of color have never been recognized here as citizens; they are not entitled to bear arms, vote for members of the legislature, or to hold any civil office. They have always been considered as in a state of pupilage, and been regarded as our wards, and for that very reason we should be extremely careful to guard and protect all the rights secured to them by our municipal regulations. They have no *political* rights, but they have *personal* rights, one of which is personal liberty.

The reporter has added to this case the following note:

> NOTE.—By a joint resolution of the legislature of Georgia in 1842 it was unanimously resolved that free negroes are not citizens of the United States, "and that Georgia will never recognize such citizenship." (Pam. Acts, 1842, p. 182.)

The next case in point of time was the great Dred Scott decision, 1856, 19 How., 393. It is now universally conceded that the greater portions of the opinions in that case are elaborate dicta, and that, as the pleadings stood, the question purported to be decided, namely, the citizenship of free negroes, could not under any proper view have been before the court. However, this much may be said: There can certainly be no question, it would seem, but that had the question been actually before the court it would have determined against citizenship. No stronger evidence of the truth of this remark could be submitted than the facts which attended the repeated argument of that case and the pains taken by the majority of the court in attempting to bring that question within their view for determination. Their expressions on the question were unequivocal. In the course of his opinion Chief Justice Taney said:

> The words "people of the United States" and "citizens" are synonymous terms and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

This decision, of course, was not without its effect, and cases arising in the South thereafter cited it for the proposition which the Chief Justice announced. Heirn *v.* Bridault, 1859, 37 Miss., 209; Mitchell *v.* Wells, id., 235, 260; Anonymous, 1859, 21 Law Reporter, 630; Clark *v.* Gautier, 1859, 8 Fla., 360; Marshall *v.* Donovan, 1874, 73 Ky, 681; Donovan *v.* Pitcher, 1875, 1875, 53 Ala., 411, 25 Am. Rep., 634.

Some courts have hesitated, as already stated, between these two extreme views. In State *v.* Newsom, 1844, 5 Ired. (N. C.), 250, the

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defendant, Elijah Newsom, a free person of color, was indicted for unlawfully carrying about his person one shotgun, without having obtained a license therefor, contrary to the provisions of a statute. In holding that this statute was constitutional and therefore that free negroes might not carry firearms without a license, the court said:

> We must, therefore, regard it as a principle, settled by the highest authority, the organic law of the country, that the free people of color can not be considered as citizens, in the largest sense of the term, or, if they are, they occupy such a position in society as justifies the legislature in adopting a course of policy in its act peculiar to them; so that they do not violate those great principles of justice which ought to lie at the foundation of all laws.

In similar case of Ely *v.* Thompson, 1820, 3 A. K. Marshall (Ky.), 70, Judge Mills, in delivering his opinion, said:

> But we are still met by the argument that free persons of color are not parties to the political compact. This we can not admit to the extent contended for. They are certainly, in some measure, parties. Although they have not every benefit or privilege which the Constitution secures, yet they have many secured by it. We need not take the trouble of inquiring how far they are or are not parties.

In Walsh *v.* Lallande, 1873, 25 La. Ann., 188, the court, in passing upon the status of a free negro in the year 1860, said:

> A citizen in its largest sense is any native-born or naturalized person who is entitled to full protection in the exercise and enjoyment of the so-called private rights.

He declared the free negro to be such a person.

In Shaw *v.* Brown, 1858, 35 Miss., 246, 315, the court seems to have faced squarely the condition in which decisions holding that free persons were not citizens had forced the courts. He said:

> But negroes born in the United States, and free by the laws of the State in which they reside, are in a different condition from aliens. They are natives and not aliens. Though not *citizens* of the State in which they reside within the meaning of the Constitution of the United States, they are *inhabitants* and *subjects* of the State, owing allegiance to it, and entitled to protection by its laws and those of the United States; for by the common law and the law of nations, all persons born within the dominion of the sovereign are his natural-born subjects and owe allegiance to him and obedience to the laws and are entitled to protection. It is true that these persons are a subordinate and inferior class of beings, and "have no rights but such as those who hold the power and the Government might choose to grant them"—Dred Scott *v.* Sandford, 19 How., 405—but they *derive their rights from the States in which they are domiciled.*

An interesting question has arisen as to the status of the child of an escaped slave who had fled to Canada, the child being born in Canada and the father never having returned to the United States. The child had applied for registration in Detroit, and upon this being refused, filed a petition for a mandamus to compel the board of registration to enroll him. No steps had ever been taken to comply with the statutes relative to naturalization. It was contended for the relator that he was a citizen by virtue of the fourteenth amendment. This view, however, was not adopted by the court, which denied his application, Cooley, J., delivering the opinion, Christiancy, C. J., and Graves, J., concurring, Campbell, J., delivering a short opinion concurring in its result.

C. Mixed races.—The question of the citizenship of persons of mixed blood has arisen in the United States with reference to two races—the Indians and the negroes. The question is not without

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some difficulty, though the rules applicable are simple in their statement and well understood. A number of the cases collected here do not involve pure questions of citizenship, but the court acted on the principle which has been applied in cases where that point was before the court for determination.

In the case of United States *v.* Sanders, 1847, Hemp., 483, 485, the defendant, a Cherokee Indian, was indicted for the murder of a white boy. The evidence fully established a wanton and unprovoked murder. The prisoner, however, contended that the mother of the boy was an Indian woman, and the evidence seemed to support him, although it did not appear whether or not she was an Indian of full blood. The defense was that the offense charged in the indictment was committed by one Indian against another, and that consequently the offense was not punishable by a Federal court, the intercourse act of 1834 providing that "for offenses between Indians the Indian courts should administer the punishment." In discussing whether or not the person killed was an Indian, the court said:

That act does not define an Indian, but uses a general term without embracing or excluding any particular class of persons. On consultation with my brother judge, we concur in laying down this rule as the safest—that the child must follow the condition of the mother. If the mother is an Indian woman her offspring must be considered Indians within the meaning of the proviso alluded to, whether the father be a white man or Indian. And so, on the other hand, the child of a white woman by an Indian father would, for all the purposes of that act, be deemed of the white race, the condition of the mother, and not the quantum of Indian blood in the veins, determining the condition of the offspring. This is substantially following the common-law rule, which was borrowed from the civil law. Justinian's Inst., book 1, title 4, p. 13. The rule of the civil law was, that one born of a free mother was free, although the father was a slave; and so, on the other hand, if the mother was a slave, the offspring partook of her condition. Rutherford's Inst., 247; Shelton *v.* Barbour, 2 Wash., 67. There can be no doubt that the rule partus sequitur ventrem generally obtains in this country. Hudgins *v.* Wrights, 1 Hen. & Munf., 137; Pegram *v.* Isabell, 2 Hen. & Munf., 193; Chancellor *v.* Milton, 1 B. Mon., 25; Esther *v.* Akin, 3 B. Mon., 60.

The prisoner was discharged. While the court, in laying down the rule thus, stated the law, his application of it to the facts in hand has been explained and criticised in Ex parte Reynolds, 1879, 5 Dill., 394, 402, in which the question was also as to the jurisdiction of the Federal court to punish for murder. The prisoner claimed that both himself and the man who was killed were Indians, and based his claim on the fact that each had married an Indian woman. It then became necessary to examine whether or not the wives of Reynolds and Puryear (the murdered man) were Indians. The wife of Reynolds was shown to be the offspring of a mother with Indian blood, her father being a full blooded Choctaw. Mrs. Puryear had some Indian blood in her veins, as had also her father, but her paternal grandfather was a full blooded white man. The question then was to what nationality she belonged, whether she was a citizen of the United States or a Choctaw woman. The court proceeds:

Does the quantum of Indian blood in the veins of the party determine the fact as to whether such party is of the white or Indian race? If so, how much Indian blood does it take to make an Indian, or how much white blood to make a person a member of the body politic known as American citizens? Where do we find any rule on the subject which makes the quantum of blood the standard of nationality? Certainly not from the statute law of the United

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States; nor is it to be found in the common law. In the case of the United States *v.* Sanders (Hempst., 486) the court held that the quantum of Indian blood in the veins *did not determine the condition of the offspring of a union between a white person and an Indian;* but further held that the condition of the mother did determine the question. And the court referred to the common law as authority for the position that the condition of the mother fixed the status of the offspring. The court is sustained in the first position by the common law, and also in the last position, if applied to the offspring of a connection between a freeman and a slave, upon the principle handed down from the Roman civil law, that the owner of a female animal is entitled to all her brood, according to the maxim partus sequitur ventrem. But by the common law this rule is reversed with regard to the offspring of free persons. Their offspring follows the condition of the father, and the rule partus sequitur patrem prevails in determining their status. (1 Bouvier's Institutes, 198, sec. 502; 31 Barb., 486; 2 Bouvier's Law Dictionary, 147; Shanks *v.* Dupont, 3 Pet., 242.) This is the universal maxim of the common law with regard to freemen, as old as the common law, or even as the Roman civil law, and as well settled as the rule partus sequitur ventrem, the one being a rule fixing the status of freemen, the other being a rule defining the ownership of property; the one applicable to different political communities or states, whose citizens are in the enjoyment of the civil rights possessed by people in a state of freedom, the other defining the condition of the offspring which had been tainted by the bondage of the mother.

No other rules than the ones above enumerated ever did prevail in this or any other civilized country. In the case of Ludlam *v.* Ludlam (31 Barb., 486) the court says: "The universal maxim of the common law being partus sequitur patrem, it is sufficient for the application of this doctrine that the father should be a subject lawfully, and without breach of his allegiance beyond sea, no matter what may be the condition of the mother."

The law of nations, which becomes, when applicable to an existing condition of affairs in a country, a part of the common law of that country, declares the same rule. Vattel, in his Law of Nations (p. 101), says: "As the society can not exist and perpetuate itself otherwise than by the children of the citizens, these children naturally follow the condition of their fathers and succeed to their rights. * * * The country of the father is, therefore, that of the children, and these become true citizens merely by their tacit consent." Again, on page 102, Vattel says: "By the law of nature alone, children follow the condition of their fathers and enter into all their rights." This law of nature, as far as it has become a part of the common law, in the absence of any positive enactment on the subject, must be the rule in this case.

These Indians are freemen; the paternal ancestors of Mrs. Puryear were freemen. The rule applicable to the offspring of freemen is certainly applicable here, if the status of the Indian nations is as declared so often by the Supreme Court of the United States, because, if that be their true status as tribes or nations, the question is to be solved in the same way as if one parent was a citizen of the United States and the other a citizen of a foreign nation.

The court held that the deceased Puryear did not become an Indian by marriage. As suggested above, the rules here laid down are the ones which have been usually applied in deciding the cases which have arisen, and the cases following are grouped according to this classification.

First. Cases under the rule partus sequitur ventrem. In the two early cases of Hudgins *v.* Wright, 1806, 1 Hen. & Munf., 133, and Pegram *v.* Isabel, 1808, 2 Hen. & Munf., 193, the question arose in suits brought to establish the freedom of parties held as slaves. In each case the parties had negro blood in their veins, and in each case their genealogy was traced back by the evidence in the cause to an Indian female ancestor. By the laws of Virginia it appears that Indians could not, normally, be held as slaves in Virginia, though their slavery had been tolerated between the years 1679 and 1691. In both cases the ruling was the same—that notwithstanding the negro blood, if the parties were descended from Indian female an-

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cestors not held as slaves within the period specified, they were freemen and not slaves.[a]

In Alberty *v.* United States, 1895, 162 U. S., 499, 501, the plaintiff in error, a Cherokee negro, who had been sentenced to death for the murder of one Duncan, sued out a writ of error assigning a want of jurisdiction in the lower court. It was found as a fact that Alberty was a negro, born in slavery, who became a citizen of the Cherokee Nation by virtue of a treaty. It appeared that Duncan, the deceased, was the illegitimate child of a Choctaw Indian by a colored woman who was not his wife, but a slave in the Cherokee Nation. The court said:

> As his mother was a negro slave, under the rule partus sequitur ventrem he must be treated as a negro by birth and not as a Choctaw Indian. * * * For the purposes of jurisdiction, then, Alberty must be treated as a member of the Cherokee Nation, but not an Indian; and Duncan as a colored citizen of the United States.

Second. Cases decided according to the rule partus sequitur patrem. This question was discussed under a very interesting state of facts in the case of McKay *v.* Campbell, 1871, 2 Sawy., 119, s. c., 2 Abb., U. S., 120. The action was brought to recover a penalty provided by act of Congress entitled "An act to enforce the right of citizens of the United States to vote in the several States of the Union, and for other purposes." The defendant had refused to register the plaintiff, alleging that the latter was an Indian. The ancestry of the plaintiff appeared to be thus: His paternal grandfather was a Scotchman who emigrated to Canada and there married one Margaret Bruce, a woman having one-quarter Indian blood. Of this marriage a son was born, Thomas. The father, mother, and son, in the year 1810, moved to what is now Oregon, the father being a partner in the Pacific Fur Company with John Jacob Astor. The grandfather dying, the son Thomas found employment with a corporation organized under the laws of Great Britain. He married a Chinook Indian woman and the plaintiff was the issue of that marriage. These facts should be noted: That at the time of his birth, which was at Fort George, now Astoria, the country was under the joint occupancy of England and the United States, and that neither his father

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[a] The two cases below are of interest in showing the operation of the principle, though not in cases of mixed blood.

In Chancellor *v.* Martin, 1840, 1 B. Mon., 25, the defendant in error was born after the institution of a suit by the mother to regain her freedom, in which suit judgment was given in the mother's favor. The court held that the judgment was conclusive proof of the freedom of the child.

In another case in the same court, Ester *v.* Akin, 1842, 3 B. Mon., 60, it appeared that one David Rice, the owner of several slaves, devised certain slaves to his children. To his daughter he gave "the use of Edith; but it is my will that the children that the said Edith now has may be free, as well as those she may have hereafter—the males when they shall severally arrive at the age of 25, the females when they shall arrive at the age of 23 years." About twenty-two years after the testator's death several persons, including some grandchildren of Edith, filed their bills in chancery to obtain liberation. All were liberated, except three grandchildren who were born before their mothers had attained 23 years of age. The question arose as to the status of these three children. The court held them to be slaves, on the ground that at the time of their births their mothers were still slaves. Of course, under the fourteenth amendment these decisions have no practical effect. However, the matter often becomes of decisive importance where the question concerns the jurisdiction of Federal courts over Indians.

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nor his grandfather were citizens of the United States by birth or naturalization. He himself, however, claimed citizenship by birth, and this raised the question whether or not he was an Indian. The court gave the following opinion:

> According to the case of United States *v.* Sanders, Memp., 483, the plaintiff follows the condition of his mother, and is an alien. It was held in that case that the issue of an Indian woman and a white man is an Indian, and vice versa; that the rule of the civil law, partus sequitur ventrem, prevailed. But the contrary is the rule of the common law in the analogous case of the issue of a marriage between a freeman and a neif. (2 Black. Com., 94.) In such case by that rule the child follows the condition of the father. My impression is that the plaintiff ought to be deemed to follow the condition of his father.

It therefore followed that the plaintiff was not a citizen of the United States. A further point in the case, as to whether he might not be naturalized, will be discussed later.

In United States *v.* Ward, 1890, 42 Fed., 320, an indictment had been found against the defendant, who was alleged to be an Indian. He was the son of a negro father by an Indian mother. The Federal statute of 1885 (23 Stat. L., 385) provided that offenses between Indians committed within the boundaries of any State of the United States and within the limits of any Indian reservation should be tried by the Federal courts. The defendant pleaded that he was not an Indian, and therefore not triable in the Federal court. Ross, J., after examining United States *v.* Sanders and Ex parte Reynolds, declared that under the rule of the latter the defendant was not an Indian, and that the jury must therefore be directed to bring in a verdict of not guilty.

In United States *v.* Hadley, 1900, 99 Fed., 437, the son of an Indian mother, the father being white, was held to be a citizen notwithstanding their residence upon a reservation and an acceptance of an allotment of Indian lands. The court, in a dictum, suggests that if such a one should grow up among the Indians and live as Indians he would be as much the subject of governmental concern as Indians of full blood, suggesting, though not stating, that he would not be a citizen. In Davis *v.* Hall, 1818, 1 Nott & McCord, 292, under a similar state of facts, except that the child was born on the reservation, the court reached the same result, but on the theory that the Indian woman by marrying a citizen became a citizen.

In United States *v.* Higgins, 1901, 110 Fed., 609, an individual of the same blood was held to be a white person—not an Indian—for purposes of taxation. This case relied on United States *v.* Hadley, supra, and distinguished an earlier case of United States *v.* Higgins, 1900, 103 Fed., 348, which held to the contrary.

The courts have at times made decisions involving the rights of persons of mixed blood and have based these decisions upon the quantity of blood of the one kind or the other which the person in question possessed. A series of cases of this kind has arisen in Ohio, beginning with Gray *v.* The State, 1831, 4 Ohio, 353, in which the question was whether or not a "negro" could be a witness on behalf of the State. The statute compelled "courts of justice to reject black and mulatto witnesses where a white person is a party." The party in question here "appeared, upon inspection, and of such opinion was the court, to be *of a shade of color between the mulatto and white.*" The court expressed itself as unwilling to extend the

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disabilities of the statute further than its letter required, and declared the party, therefore, a competent witness. He said: "We believe a man, of a race nearer white than a mulatto, is admissible as a witness, and should partake in the privileges of whites." This case was approved in a series of cases which follow, the later ones usually involving the question of the privileges of children, with reference to the public schools and the public school fund.

In Williams *v.* Directors of the School District, 1834, Wright, 578, 580, the law in question provided that while the teacher was employed out of the common school fund, the school should be free to all white children. The question to be decided in this case was whether or not children of a white mother and a father three-quarters white were white within the meaning of the law, and the court, relying on Gray *v.* State, supra, held that the children came within the terms of the statute. The court said:

We think the term white as used in the law describes *blood*, and not *complexion*, and are satisfied with the construction heretofore given. The plaintiff's children, therefore, are white within the meaning of the law, though the defendants have had the shabby meanness to ask from him his contribution of tax and exclude his children from the benefit of the schools he helped to support.

In Jeffries *v.* Ankeny, 1842, 11 Ohio, 372, 375, the question was whether or not the plaintiff was of the Indian race, although having no more than one-fourth Indian blood, the rest being white. The constitution had provided that free white citizens were entitled to the franchise. The court held that the plaintiff was entitled to vote, Read, J., dissenting. Lane, C. J., in the majority opinion said:

We regard this matter as clearly settled by the interpretation which the expression in the constitution has received by this court on the circuit and in banc. In 1831, in the case of Polly Gray *v.* The State of Ohio, 4 Ohio Rep., 354; and in 1833, in the case of Williamson *v.* School Directors, etc., Wright's Report, 178, it was held that in the constitution and the laws on this subject there were enumerated three descriptions of persons—whites, blacks, and mulattoes—upon the two last of whom disabilities rested; that the mulatto was the middle term between the extremes, or the offspring of a white and a black; that all nearer white than black or of the grade between the mulattoes and the whites were entitled to enjoy every political and social privilege of the white citizen; that no other rule could be adopted so intelligible and so practicable as this, and that further refinements would lead to inconvenience and to no good result.

In his dissenting opinion Read, J., said:

Indians are not designated as white men. If not, part Indians can not be pure whites; and to hold that all persons less than half Indian are white would establish a principle that would make all persons less than half black or negro white. This would admit into our common schools all persons who were less than half negro or black. Now, it is known that the people of Ohio will not permit their children to be compelled to associate with persons of part negro blood in our schools. To prevent this matter the phraseology of the statute was carefully worded.

The next case before this court was as to the right of a person with negro blood to vote, and the court with the same dissent held that an instruction to the jury which declared that in case the plaintiff had more white than negro blood he was entitled to vote was correct. Thacker *v.* Hawk, 1842, 11 Ohio St., 376. The question arose once more in Ohio in the case of Lane *v.* Baker, 1843, 12 Ohio., 237, in which a child with Indian, negro, and white blood, but who the jury found was of "more than half white blood," had been denied

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admission to the schools. The court, following the cases already cited, held that such a one was white within the meaning of the statute.

The case in the Federal courts of McKay *v.* Campbell, already discussed, supra, was also made to turn somewhat upon this point. The court in that case mathematically calculated the quantum of Indian blood in the plaintiff's veins, reaching the following decision:

> The plaintiff is nine-sixteenths Indian, eight of which he gets from his Chinook mother and the other one from his Canadian father. As a matter of fact, the Indian blood predominating, he is not a half-breed, as claimed on the argument by his counsel, but I can not perceive that it is material to consider whether he is a half-breed or not. In legal contemplation he is an American Indian by virtue of his mother being a member of the Chinook tribe, or a British subject, without reference to his race, by virtue of being the son of Thomas McKay and his birth in the allegiance of the British Crown.

But as already indicated above, what the court really decided was that the status of the father controlled. The question was referred to in In re Camille, 1880, 6 Sawy., 541, in which it appeared that Frank Camille, an applicant for admission as a citizen, in the case, was half white and half Indian, and the court, after an examination of the cases discussed above said:

> Upon these authorities, and none other have come under my observation, the petitioner is not entitled to be considered a white man. As a matter of fact he is as much an Indian as a white person, and might be classed with the one race as properly as the other. Strictly speaking he belongs to neither.

The court denied citizenship.

Of course the fourteenth amendment has put an end to all controversies in the matter concerning persons of mixed white and negro blood, though the question might still be agitated with reference to persons of mixed Indian and white blood; but it would seem that the rules already discussed in connection with the status of persons of mixed blood would be entirely sufficient to dispose of such questions without resorting to a computation of the amount of the respective bloods which a person might have in his veins.

D. Inhabitants of acquired territories.—The status of inhabitants in territory acquired by treaty or purchase is usually to be determined by reference to the terms of the instruments involved in the transfer, and this question has been somewhat fully treated in Chapter VI, Part II, infra. The matter will therefore be disposed of here with a few words.

The inhabitants of Florida were held to be citizens of the United States during the time they were under Territorial government (American Ins. Co. *v.* Canter, 1828, 1 Pet., 511), but not so with the inhabitants of the Territory of New Orleans under the treaty of 1803, for it appears almost certain that they were not citizens of the United States until the Territory was admitted as the State of Louisiana (Desbois's case, 1812, 2 Mart., 185; United States *v.* Laverty, 1813, 3 Mart., 736; State *v.* Primrose, 1843, 3 Ala., 546; In re Harold, 1840, 1 Clark (Pa., L. J.), 214).

More recently the question has arisen in connection with the inhabitants of our island possessions, but has not yet been squarely decided. In re Gonzales, 1902, 118 Fed., 941, the question arose as to whether or not a native Porto Rican woman was a citizen or an alien within the laws restricting immigration, and the circuit court held she was not a citizen but an alien. On appeal, however, to the

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Supreme Court, under the title of Gonzales *v.* Williams, 1903, 192 U. S., 1, the court held she was not an alien within the meaning of the immigration laws, but expressly waived the question of citizenship, which remains undecided, unless, indeed, the ground is taken that all persons must be either citizens or aliens, which may well be regarded as questionable in view of the decisions cited above concerning the status of the inhabitants of the Territory of New Orleans before its admission as Louisiana.

The general question of the relationship of Porto Rico and the Philippines to the United States has received elaborate treatment in Downes *v.* Bidwell, 1900, 182 U. S., 244; Dorr *v.* United States, 1903, 195 U. S., 138, and the insular cases generally. And see also Hawaii *v.* Mankichi, 1902, 190 U. S., 197; Rasmussen *v.* United States, 1904, 197 U. S., 516.

SECTION 2.—*Of alien inhabitants.*

A. OF PARENTS WHO MAY BECOME CITIZENS.

Where the residence was temporary.—This question as to the citizenship of children born in the United States of alien parents who were in this country merely temporarily arose and was elaborately examined in the case of Lynch *v.* Clark, 1844, 1 Sandf. Ch., 583. It appeared in that case that not only were the parents here temporarily, but that within a year from the time of the child's birth they had taken her with them on their return to their native country—Great Britain. The court showed no hesitancy in declaring that the child so born was a citizen of the United States. In a later New York case, Munro *v.* Merchant, 1858, 26 Barb., 383, 400, when the question came again before the court, under circumstances that were almost identical, the court followed, but questioned, the Clark case.

Where the residence was permanent.—Of course if the above cases are sound, as they would seem to be on the question of birth, it follows that where the residence is permanent the child born here of such residents should be considered a citizen of the United States; and such has been the uniform doctrine as announced by both Federal and State courts. See McCreery *v.* Somerville, 1824, 9 Wheat., 354 (children of Irish parents); McClean *v.* Swanton, 1856, 13 N. Y., 535; Benny *v.* O'Brien, 1895, 58 N. J. L., 36 (children of Scotch parentage); In re Giovanna, 1899, 93 Fed., 659 (children of Italian parentage); and see Hartford *v.* Canaan, 1886, 55 Conn., 39. An interesting application (perhaps an exception) of the doctrine is found in McKay *v.* Campbell, 1871, 2 Sawy., 118, in which it was held that a child born in Oregon of British parents during the joint occupation of that territory by the United States and Great Britain was a British subject.

B. OF PARENTS WHO MAY NOT BECOME CITIZENS.

This question seems to have arisen in connection with alien parents who were domiciled in this country, and not in connection with persons residing here temporarily. Moreover, the cases found have always concerned the citizenship of persons of Chinese parentage. The leading case on the subject is In re Look Tin Sing, 1884, 10

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Sawy., 353, s. c. 21 Fed., 905, in which Field, circuit justice, held that under the fourteenth amendment a person born of alien parents who might not themselves be naturalized was, by his birth, a citizen of the United States, and that it was immaterial that the parents of such a person were not able to become citizens under our naturalization laws.[a] This case has been recognized and followed ever since its determination. Ex parte Chin King, Ex parte Chan San Hee, 1888, 35 Fed., 354; In re Yung Sing Hee, 1888, 36 Fed., 437 (in these cases it was declared that the rule acted upon was the rule of the common law which had been incorporated into our "fundamental law" by the fourteenth amendment); In re Wy Shing, In re Wong Gan, 1888, 36 Fed., 553. While the principle was recognized by the Federal Supreme Court as early as 1891 (see Quock Ting *v.* United States, 1891, 140 U. S., 417), the question did not come up for decision until the great case of United States *v.* Wong Kim Ark, 1898, 169 U. S., 649, affirming 71 Fed., 382, when the court held squarely that a person born in the United States of Chinese parentage was a citizen of the United States. While the following decisions have not held this doctrine, they have recognized it, the decision in each case going to the point of what evidence was sufficient or insufficient to establish the fact of citizenship: State *v.* Chew, 1881, 16 Nev., 50 (which appears to be the earliest case in which the principle is recognized, it being three years earlier than the Look Tin Sing case); Quock Ting *v.* United States, supra; Lem Hing Dun *v.* United States, 1892, 1 C. C. A., 210; Gee Fook Sing *v.* United States, 1893, 49 Fed., 146; United States *v.* Chung Fung Sun, 1894, 63 Fed., 261; Lee Sing Far *v.* United States, 1899, 94 Fed., 834.

C. ELECTION OF CITIZENSHIP.

Inasmuch as our Government declares that all persons born in the United States are citizens of the United States, and also recognizes, as well as adopts, on its own part, the rule that children of citizens resident abroad are citizens of the country to which the parents owe allegiance, there arises, as will be seen, a conflict of citizenship, spoken of usually as dual allegiance. The matter was up for consideration and decision in Trimbles *v.* Harrison, 1840, 1 B. Mon., 140, where the matter to be determined was as to the citizenship of a woman who, born in Boston in 1773, of British parents, was taken by her father to England prior to 1798, where she was married. In discussing this question the court said:

> The question then arises, Was Anne E. Dixon an American citizen or was she a British subject at the time of her father's death? Being born at Boston in 1773, she was by birth a British subject, with the right, however, upon the principles already stated, of changing or retaining that character. Being incapacitated by infancy from making an election for herself during the Revolution, her election should be considered as having followed the character of her father, subject to the right of disaffirmance in a reasonable time after the termination of her minority, and her condition was not conclusively decided by the treaty of peace. Inglis *v.* Sailors' Snug Harbor, 3 Pet., 123–126. Did she disaffirm the election, or adhere? The witness, after speaking of the time of her birth, says "she was subsequently brought to England by her father, where

[a] As will be noted later, Justice Field had decided six years earlier the leading case which denied to Mongolians the right to be naturalized. See In re Ah Yup, 1878, 5 Sawy., 155. See also Part 3, chap. 1, sec. 2 A, infra.

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she was married on the 5th of July, 1798." If from this language it is to be implied, as it may be, that she was taken to England during her minority, then, as while there she was married when of mature age to a British subject, and as she has remained there ever since, we should not doubt that these circumstances furnish ample manifestation of her dissent from her father's election for her and of her adherence to her native allegiance. If she was not taken to England until after she had attained the age of 21 years, still her marriage and continued residence there for so long a period are sufficient evidence of her determination to become a British subject. (Shanks *v.* Dupont, supra.) These facts may be regarded as manifesting that such was her intention, not only from the time of her going there, but from the time when she was capable of electing for herself to which allegiance she would adhere; and as it may be presumed that her being taken there afforded the first opportunity of decisively manifesting her dissent from her father's election for her, we are of opinion that her disaffirmance must be regarded as having been made within a reasonable time, no matter at what period before her marriage she was taken to England. Had she affirmed the election made for her, the affirmance would have related back with the same effect as if she had been capable during the Revolution and had then made it herself. As she disaffirmed it, her native allegiance was never renounced or released, and she remains as she was born, a British subject, and so we presume she would choose to be regarded and, as we suppose, would be regarded in England if she should survive her husband and claim dower in his lands there. But if we should be mistaken in placing her alienage on the ground of her having disaffirmed her father's election for her within a reasonable time after the termination of her minority, and if, therefore, she is to be considered as having been once a citizen of the United States, still the decisive facts remain that, being in England and of mature age, she there married a British subject, with the prospect and therefore with the presumed intention of remaining during life in that country and subject to its power, and that she has for forty years so remained a subject, in fact, of Great Britain. These facts, as we think, sufficiently demonstrate her intention to renounce her character as an American citizen and to identify herself, in allegiance as well as in fortune, with her husband and his country.

In Lynch *v.* Clark, 1844 (1 Sandf. Ch. 583, 673), the question was elaborately considered though not decided, and while the assistant vice-chancellor stated no definite conclusion on the matter, he appears to have regarded the right of election not only as undesirable, but as wholly unsound politically. He began his discussion of the matter by saying:

> It was assumed to be an indisputable proposition, that by the international or public law she [an American child born of foreign parents and taken to the native country of the parents during the first year of her life, in which country she had since resided] was an alien; for that by the public law, the child follows the political condition of the parent. It is evident that this rule, without very important qualifications, might lead to the perpetuation of a race of aliens; for if no one of the successive fathers effected his naturalization during the minority of the next in succession, generation after generation would continue in a state of alienage. Accordingly, the difficulty is sought to be obviated, by giving to the child born of alien parents the election, on arriving at maturity, to become a citizen either of the State where he was born or of the State of which his father was a member. In effect, this brings us back to the theory of the formation of States and Governments, by voluntary compact of their inhabitants; and yields to every man the unqualified right of throwing off allegiance by birth, whenever he becomes of age, and attaching himself to any community which pleases him. And if he may do it when he attains his full age, why may he not exercise the same natural right every successive year of his life, and with these notions of allegiance fully established, a State with a well-appointed army of its citizens in the field to-day might to-morrow find itself without citizens, and its troops in the full fruition of a new allegiance in the ranks of its enemy.

However, notwithstanding such expressions as this, the right of election has been recognized by our courts, and in the Supreme Court as early as 1830 (see Inglis *v.* Trustees of Sailors' Snug Harbor, 3

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Peters, 99, 126) Mr. Justice Thompson said, concerning an infant who, born in the United States of alien parents, had removed with his father during infancy to the country of the father's allegiance:

If born after the 4th of July, 1776, and before the 15th of September of the same year, when the British took possession of New York, his infancy incapacitated him from making any election for himself, and his election and character followed that of his father, subject to the right of disaffirmance, in a reasonable time after the termination of his minority; which never having been done, he remains a British subject, and disabled from inheriting the land in question.

In the case of Jones *v.* McMasters, 1857 (20 How., 8), Mr. Justice Nelson, in delivering the opinion of the court in a case involving the question of citizenship, said:

The plaintiff was born under the dominion of the Mexican Republic [in what afterwards became the State of Texas], and has lived under it ever since her birth [she having been removed by her parents into the territory of Mexico proper before the declaration of Texan independence], and beyond all question, therefore, is a citizen of that Government, owing it allegiance, which has never been interrupted or changed. There has been no act of hers, or of any one competent to represent her, or to determine her election, indicating an intention to throw off this allegiance and to attach herself to the new sovereignty of Texas. Having been born and having always lived under the old government, the burden rested upon the defendants, who claimed that she was a citizen of the new one, to establish the fact of the change of her allegiance. * * * The facts set up in the plea prove the contrary. According to these the plaintiff was 19 years old when this suit was commenced, and between 22 and 23 years when the plea was put into the jurisdiction. If she was competent to make an election while a minor, but after she had arrived at mature years, as to the government to which she would owe allegiance, the presumption, upon the facts, is that she has made it in favor of the one under which she has lived since her birth. If she was incompetent to make it during her minority, then the allegiance due at her birth continued, and existed at the time of the commencement of the suit.

And see also the discussion in Trabing *v.* United States, 1897, 32 Court of Claims, 440, though in this case, like the one preceding, the party in question was neither native born nor born of citizen parents. The discussions, therefore, are merely dicta.

As to the manner in which an election may be made, it would seem from some cases that it is not made by mere removal after the child becomes of age into a foreign country, followed by a more or less lengthy residence there (see Calais *v.* Marshfield, 1849, 30 Me., 511; but see the remarks of the court at pp. 516, 517), but the expressions in the extracts already quoted lead to a different conclusion.

The courts have said that an election can not be made for the infant by the parent. On this point Deady, J., said:

However, in my judgment a father can not deprive his minor child of the status of American citizenship, impressed upon it by the circumstances of its birth under the Constitution and within the jurisdiction of the United States. This status, once acquired, can only be lost or changed by the act of the party when arrived at majority and the consent of the Government. Ex parte Chin King, 1888, 35 Fed., 354.[a]

The question of election under treaties it has been thought unnecessary to consider. Cases bearing on the subject are collected in Part II, Chapter VI, infra.

[a] The remarks of the court here seem to contemplate an act of expatriation rather than merely a question of election.

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CHAPTER 2.—CHILDREN BORN ABROAD.

SECTION 1.—*Of American parents permanently residing abroad.*

A. OF NATIVE AMERICANS.

The earliest statute passed by Congress on the question of naturalization provided that—

> the children of citizens of the United States that may be born beyond sea, or out of the limits of the United States, shall be considered as natural-born citizens: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States. [1 Stat. L., 103.]

The provisions of this statute were reenacted in the statute of 1795, seem to have been omitted from the statute of 1798, but were again incorporated in the statute of 1802, though now made to read that "the children of persons who now are, or have been, citizens of the United States, shall," etc. Under the provisions of this latter statute, of course, children of parents born after the time of the statute would not be American citizens if the children were born abroad. Accordingly the statute of 1855 reenacted substantially the first statute, making general its application by the words—

> that persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were, or shall be at the time of their birth, citizens of the United States. [10 Stat. L., 604.]

There has been considerable discussion as to whether or not this statute and the English statute of 25 Edward III, providing for the right of inheritance by foreign-born children of English subjects, were merely a declaration of the common law or were creative. See United States *v.* Wong Kim Ark, 1897, 169 U. S., 670. The decision of the point is, however, of no practical importance, since our courts, acting under the express authority of the Federal statute, have uniformly declared that children born abroad of American parents were citizens of the United States. See Campbell *v.* Wallace, 1841, 12 N. H., 362; Lynden *v.* Danville, 1856, 28 Vt., 809, per Redfield, C. J.; State *v.* Salge, 1865, 1 Nev., 455; Hegdman *v.* Board, 1872, 26 Mich., 51; State *v.* Haynes, 1880, 54 Iowa, 109. And see Ware *v.* Wisner, 1883, 50 Fed., 310, where it was held that the wives of such foreign-born children became by marriage citizens of the United States.

The question has not infrequently arisen where but one of the parents is a citizen, the other being an alien. Where the father is an American citizen and the mother an alien, the courts have held that the children of such a marriage were citizens; Charles *v.* Monson & Brimfield Mfg. Co., 1895, 17 Pick.,70; Davis *v.* Hall, 1818, 1 Nott & McCord, 292 (where the mother was an Indian woman). But if the children of a citizen father are illegitimate, the courts have refused to regard them as citizens. Guier's Lessee *v.* Smith & Thompson, 1864, 24 Md., 239.

In Albany *v.* Derby, 1858, 30 Vt., 718, the court declared that if the foreign-born child did not return to America until after he was of age he was an alien.

If the father be an alien and the mother a citizen of the United States, it would seem that the children should be citizens of the

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State to which the father belongs, under the ruling of the cases just discussed. While no case holding this point squarely has been found, the case of Davis *v.* Hall contained a dictum to this effect, and the question was in a way involved in the case of Barzizas *v.* Hopkins, 1824, 2 Randolph, 276, but was not necessarily involved, since the decision might have been placed on other grounds.

Grandchild cases.—That provision of the statute which declares the necessity for a residence in this country at some time of the father of such foreign-born children has been before the court in a number of interesting cases. The earliest is that of Barzizas *v.* Hopkins, supra, in which one John Paradise married an American citizen. Some time after the marriage husband and wife went to England, where he died. Of this marriage there were two daughters born in England, one of whom died an infant, and the other intermarried in England with Barzizas, a Venetian nobleman. Neither Barzizases nor his wife were ever in the United States. They had two sons, both born in Venice, who were the lessors of the plaintiff. The question arose as to the status of these sons. The court declared that the Brazizas were not citizens; that their grandmother by marrying an Englishman became a British subject; that their mother thus became a British subject, and that, of course, the two sons could not under this view be American citizens. Moreover, if this had not been true, still the mother, never having been in the United States, had not brought herself within the language of the statute.

The question was again before the courts in the case of State *v.* Adams, 1876, 45 Iowa, 99, where it appeared that a man (whether married or unmarried is not stated) moved to Canada and there had a son, who married in Canada, presumably an alien, and himself had a son. Son and grandson came to the United States. The court held that the grandson was a citizen. The situation was before the courts for consideration a third time, in Brown *v.* Dexter, 1884, 66 Cal., 89, in which it appeared that husband and wife, both American citizens, moved to Canada, * * * had a son, who later married, presumably an alien, and had a son, the petitioner. Three months before the petitioner's birth his father swore allegiance to the Queen of England. Later the father and the petitioner came to the United States. The petitioner applied for registration, which was refused, when he filed this petition for a mandamus. The court denied his petition on the ground that he was not a citizen of the United States. This case is, of course, distinguishable from State *v.* Adams, since here the father had become a subject of Great Britain. But taking the oath of allegiance has been held not to amount to an act of expatriation. See cases, Part III, Chapter II, section 2, A, and under such a view the case may be questioned.

B. OF NATURALIZED AMERICANS.

It, of course, should make no difference that the American parents residing abroad are naturalized citizens and not native-born citizens. The children born abroad from such parents should be considered American citizens, and this has been the ruling of the courts. See Oldtown *v.* Bangor, 1870, 58 Me., 353.

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SECTION 2.—*Of American parents temporarily residing abroad.*

A. OF NATIVE AMERICANS.

Where both parents are American citizens.—It is obvious that a child born of American parents while the latter are temporarily absent from the United States should be considered as citizens of the United States, and this has been expressly determined. See United States *v.* Gordon, 1861, 5 Blatch., 18.

Father citizen, mother alien.—The courts have made no distinction on the ground of alienage of the mother. One of the leading cases on the subject is Ludlam *v.* Ludlam, 1860, 31 Barb., 486, 503, where the court laid down the law in such comprehensive terms that it may be well quoted:

> I conceive that: (1) By the common law when a subject is traveling or sojourning abroad, either on the public business or on lawful occasion of his own, with the express or implied license and sanction of the sovereign, and with the intention of returning, as he continues under the protection of the sovereign power, so he retains the privileges and continues under the obligations of his allegiance, and his children, though born in a foreign country, are not born under foreign allegiance, and are an exception to the rule which makes the place of birth the test of citizenship. (2) That as the universal maxim of the common law is partus sequitur patrem, it is sufficient for the application of the doctrine just stated that the father should be a subject, lawfully and without breach of his allegiance beyond sea, no matter what may be the condition of the mother. (3) That the children of subjects thus sojourning or traveling beyond the seas were recognized as denizens under English law when and as fast as the occasion and instances of foreign travel and temporary residence multiplied, and the question was presented to the courts, and this was by the development and application of the doctrines of the common law, and not by mere force of statutes. (4) That the statute of Edward III was not intended, nor is it to be understood, as abrogating an existing rule of law, and introducing a new rule by the will of the legislature, but was declaratory in its nature, or at least furnishes no evidence that the rule of the common law was other than that contained in its provisions, but rather the contrary. The denization of the children of a British father by a foreign mother, before the statute of Anne, must be attributed to the common law, rather than to a strained construction of the statute of Edward, and is an important indication of the origin of the whole doctrine on this subject.

And see Wolff *v.* Archibald, 1882, 14 Fed., 369.

B. OF NATURALIZED AMERICANS.

In the only case found covering this point it seems that only the father was naturalized, the mother apparently having been an alien. It appeared in the case that the residence abroad, while quite prolonged, was always, however, considered to be temporary, the intention being to return to the United States. The children born during this residence were considered American citizens. Sasportas *v.* De la Motta, 1858, 10 Rich. Eq., 38.

SECTION 3.—*Election of citizenship.*

No direct adjudication to the effect that such a foreign-born citizen has at the time of his coming of age an election as to which of the two sovereignties he shall finally extend his sole allegiance has been found, but several of the cases have recognized the principle. One of the clearest statements of this recognition occurs in State *v.* Adams, 1876, 45 Iowa, 99, where, as set forth above, it appeared that the grandson of an American citizen born in Canada came to Iowa and became

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a resident there. In the course of his opinion the judge said: "The plaintiff, at the time of his election, was a citizen of the United States." The principle seems also to have been acted upon in the case of Albany *v.* Derby, 1858, 30 Vt., 718, since the fact that the party in question had resided in a foreign country after becoming of age was considered to determine the question of her alienage. But the case of Ware *v.* Wisner, 1883, 50 Fed., 310, seems not to accord with this doctrine. It appeared in that case that the two sons (foreign born of parents who were citizens of the United States), by the right of whose wives the parties claimed, not only had remained in Canada after becoming of age, but had voted in Canada and performed generally the duties of citizens, and yet, as indicated, the court held that they had not lost their citizenship. But, as already shown above—section 2 C—there appears to be a well-established doctrine of election, which the courts have recognized; and it seems to be as well and even as frequently recognized in cases dealing with the rights of children foreign born of American parents as with the rights of children American born of foreign parentage.

PART II.—CITIZENSHIP BY NATURALIZATION.

CHAPTER I.—NATURALIZATION BY TAKING OUT PROPER PAPERS.

SECTION 1.—*Where the naturalizing power resides.*

A. In accordance with the constitutional grant that Congress shall have power "to establish an uniform rule of naturalization" [art. 1, sec. 8] the first National Congress at its second session passed an act providing for the naturalization of aliens. [1 U. S. Stat. L., 103, act of March 26, 1790.] Before Congress thus acted—during the period of the Revolution and the period of the Confederation—the States, more or less generally, had themselves passed laws providing for the naturalization of foreigners. This condition of affairs gave rise to two questions: First, of what force were these State laws in conferring Federal citizenship before Congress had acted, and, secondly, how, if at all, did the Federal act passed in 1790 affect the exercise of a naturalizing power by the States?

The first point seems never to have been before the courts for adjudication, for in all the cases cited infra the oath of allegiance, taken and administered in accordance with the State law, was so taken after the passage of the act of Congress. Discussions of the question (and there are a number) have usually been made to turn upon the great constitutional point—whether or not a power granted to Congress, in words not exclusive, and without a prohibition against State action, may be exercised by the States until Congress acts; and the answers given to the question have varied as the one expressing them took one side or the other of the fundamental proposition.[a]

[a] Congress settled the matter inferentially by the act of 1802, when it provided that the children of parents naturalized by a State law prior to the Congressional action should have the same status as children born of parents who had been naturalized under the Federal law.

The question has, however, arisen as to the force of laws respecting allegiance which were passed by the different Commonwealths during the period of the Revolution, and it has been declared they were the legislative acts of independent sovereign States. [McIlvaine *v.* Coxe (1808), 4 Cr., 209.]

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IS THE FEDERAL POWER EXCLUSIVE?

The answer to the second proposition appears well settled. Apparently the first case that involved the point was Collet *v.* Collet[a] [(1792) 2 Dallas, 294], in which the issue was whether or not one who had taken an oath of allegiance to the State of Pennsylvania was a citizen within the meaning of the Constitution for purposes of jurisdiction in Federal courts. As the opinion of the court is the first given on the subject, it is given below in full:

BY THE COURT. The question now agitated depends upon another question, whether the State of Pennsylvania, since the 26th of March, 1790 (when the act of Congress was passed), has a right to naturalize an alien? And this must receive its answer from the solution of a third question, whether, according to the Constitution of the United States, the authority to naturalize is exclusive or concurrent? We are of opinion, then, that the States, individually, still enjoy a concurrent authority upon this subject, but that their individual authority can not be exercised so as to contravene the rule established by the authority of the Union. The objection founded on the word *uniform* and the arguments ab inconvenienti have been carried too far. It is likewise declared by the Constitution (art. 1, § 8) that all duties, imposts, and excise shall be *uniform* throughout the United States, and yet, if express words of exclusion had not been inserted, as in a subsequent part of the same article (§ 10), the individual States would still undoubtedly have been at liberty, without the consent of Congress, to lay and collect duties and imposts. Again, when it is said that one State ought not to be privileged to admit obnoxious citizens to the injury of another, it should be recollected that the State which communicates the infection must herself be first infected; and in this, as in other cases, we may be assured that the principle of self-preservation will inculcate every reasonable precaution.

The true reason for investing Congress with the power of naturalization has been assigned at the bar. It was to guard against too narrow, instead of too liberal, a mode of conferring the rights of citizenship. Thus the individual States can not exclude those citizens who have been adopted by the United States, but they can adopt citizens upon easier terms than those which Congress may deem it expedient to impose.

But the act of Congress itself furnishes a strong proof that the power of naturalization is concurrent. In the concluding proviso it is declared "that no person heretofore proscribed by any State shall be admitted a citizen aforesaid, except by an act of the legislature of the State in which such person was proscribed." Here we find that Congress has not only circumscribed the exercise of its own authority, but has recognized the authority of a State legislature, in one case, to admit a citizen of the United States, which could not be done in any case if the power of naturalization, either by its own nature or by the manner of its being vested in the Federal Government, was an exclusive power.

Upon the whole, the court think that the plea to the jurisdiction has been maintained, and therefore the bill must be dismissed.[b]

In the next case [U. S. *v.* Villato (1797), 2 Dallas, 370], which also arose in Pennsylvania, one Francis Villato, a Spaniard, having taken the oath specified by the laws of Pennsylvania for naturalization, went to the West Indies, where he boarded a French privateer and aided in capturing an American vessel. He was committed by the district judge on a charge of high treason against the United

[a] Wharton remarks: "It is remarkable that the argument in this case turned entirely upon the point whether the Federal power of naturalization was exclusive or concurrent, and nothing was said by either side respecting the existence and operation of the act of Pennsylvania, which, as it depended in form and spirit on the old constitution, was virtually repealed when that constitution was abolished.

[b] It is of some interest to note that the oath of allegiance in this case was taken April 30, 1790, while the Federal statute was passed March 26, 1790.

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States, and the question before the circuit court (for the Pennsylvania district) was whether the prisoner had become a citizen of the United States in consequence of the oath taken and subscribed by him on the 11th of May, 1793. Peters, Justice, said:

> The prisoner is not a citizen of the United States, and that consequently he must be released from the charge of high treason.

Iredell, Justice, concurred, with this further remark:

> If the question had not previously occurred, I should be disposed to think that the power of naturalization operated exclusively as soon as it was exercised by Congress.

The decision itself went on the ground of the overlooked point in Collet *v.* Collet, supra, namely, that the adoption in Pennsylvania of a new constitution had virtually repealed the laws passed in the year 1789 and before, and that, therefore, under no view could Villato be considered a citizen. Obviously, the case is of no authority as an adjudication on the point now under discussion.

The question does not seem to have arisen again until the case of Chirac *v.* Chirac [(1817), 2 Wheaton, 259], in which certain naturalization laws passed by an act of the assembly of Maryland in 1779 came in question, one John Baptiste Chirac, a native of France, having taken the oaths of citizenship according to the form prescribed by that act. Mr. Chief Justice Marshall, in the early part of his opinion, stated "that the power of naturalization is exclusively in Congress does not seem to be and certainly ought not to be controverted," and this remark, seemingly obiter,[a] has been ever since cited as overruling the earlier case of Collet *v.* Collet[b] and as settling the law on the question. The opinion thus expressed by Marshall was in entire harmony with the earlier one of Hamilton as set forth in the Federalist, No. 32, where, commenting on the constitutional clause providing for uniform naturalization, he said:

> This must necessarily be exclusive, because if each State had power to prescribe a *distinct rule*, there could not be a *uniform rule*.

The validity of the Pennsylvania act came up for the third, and apparently last, time for Federal decision in Matthews's Lessee *v.* Rae, supra, which is briefly reported as follows: An action of—

> ejectment for lots in Georgetown, D. C. The plaintiff's lessors were aliens and claimed as heirs at law of James Redman, who was born in England, came to this country in 1793, and went through the forms of naturalization prescribed by the laws of Pennsylvania passed in 1789 and by the laws of Maryland passed in 1779. Congress had passed a general naturalization law in the year 1790.
>
> The court (Thurston, J., absent) was of opinion that Redman was not naturalized, the State naturalization laws being superseded and annulled by the act of Congress whose jurisdiction upon that subject is, under the Constitution of the United States, exclusive (Chirac. *v.* Chirac, 2 Wheat., 261); and that, according to the case of Spratt *v.* Spratt, 1 Peters, 343, the plaintiffs, although aliens, were entitled to recover.

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[a] "The case turned upon the effect of the treaty with France; but it appears to me that the court would otherwise have supported the point." Per Hoffman, J., commenting on the principal case in In re Ramsden (1857), 13 How. Pr., 429, 432.

[b] See note to Collet *v.* Collet, op. cit., Brightley's edition. As approving the case, see Matthews's Lessee *v.* Rae et al. (1829), 3 Cranch C. C., 699; License cases (1847), 5 How., 504, 584; Passenger cases (1849), 7 How., 282, 555; Comitis *v.* Parkerson (1893), 56 Fed., 556, 558; U. S. *v.* Wong Kim Ark (1897), 169 U. S., 649, 701; Stephens Petitioner (1855), 4 Gray, 559, 561.

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However, such disposition of the point has not passed unchallenged. In delivering his opinion in the Passenger cases [(1849), 7 How., 282, 555], Mr. Justice Woodbury used the following language:

Even the power to pass uniform naturalization laws was once considered by this court as not exclusive (Collet *v.* Collet, 2 Dall., 296), and though doubt has been flung on this since by the United States *v.* Villato, 2 Dall., 372; Chirac *v.* Chirac, 2 Wheat., 269, and by some of the court in 5 How., 585, and Golden *v.* Prince, 3 Wash. C. C., 314, and though these doubts may be well founded unless the State naturalization be for local purposes only in the State, as intimated in Collet *v.* Collet, and more favorable than the law of the United States, and not to give rights of citizenship out of the State (1 Bl. Com. by Tucker, App., 3, 4, 255, 296), which were the chief objections in 3 Wash. C. C., 314, yet this change of opinion does not impugn in principle the ground for considering the local measure in their case as not conflicting with foreign commerce. The reasoning for a change there does not apply here.

But this tone of doubt in the justice's remarks appears to have had no effect, for the courts themselves seem generally not to have hesitated, and expressions since then have fully affirmed the position taken in Chirac *v.* Chirac. One of the best of these expressions to be found in the reports is that of Mr. Chief Justice Taney in Dred Scott *v.* Sandford [(1856) 19 How., 393, 405] in which he uses this language:

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State and yet not be entitled to the rights and privileges of a citizen in any other State. For previous to the adoption of the Constitution of the United States every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character of course was confined to the boundaries of the State and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Now, have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or anyone it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the rights and immunities which the constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It can not make him a member of this community by making him a member of its own; and for the same reason it can not introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

In Lanz *v.* Randell [(1876), 4 Dill., 425, 429], Miller, circuit judge, expressed his views on the question in these words:

I am of opinion that no State can make the subject of a foreign prince a citizen of the State in any other mode than that provided by the naturalization

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laws of Congress; that when the Constitution (art. 1, sec. 8) says that Congress shall have power "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States," it designed these rules, when established, to be the *only rules* by which a citizen or subject of a foreign government could become a citizen or subject of one of the States of this Union and thereby owe allegiance to such State and to the United States, and cease to owe it to his former government.

In The City of Minneapolis *v.* Reum [(1893), 56 Fed., 576, 580], Sanborn, circuit judge, said:

Congress has exercised this power, established the rule, and expressly declared that foreign-born residents may be naturalized by a compliance with it, and not otherwise. This power, like the power to regulate commerce among the States, was carved out of the general sovereign power held by the States when this Union was formed and granted by the Constitution to the Congress of the United States. It thus vested exclusively in Congress, and no power remained in the States to change or vary the rule of naturalization Congress established, or to authorize any foreign subject to denationalize himself and become a citizen of the United States without compliance with the conditions Congress had prescribed.

And in the recent case of the United States *v.* Wong Kim Ark, supra, Mr. Chief Justice Fuller declared that—

The power granted to Congress by the Constitution, "to establish an uniform rule of naturalization," was long ago adjudged by this court to be vested exclusively in Congress.

It would appear, therefore, that the matter might now be considered settled in the Federal courts. But the State courts have almost uniformly adopted the same view, some of them, indeed, very early.[a]

In 1818 the constitutional court of South Carolina held that "the power of passing laws on the subject of naturalization exclusively

[a] The isolated case of Ex parte Knowles [(1855), 5 Cal., 300] must, it would seem, be regarded as an anomaly. The court there held, contrary to the number of express rulings on the point (see section on State and Federal citizenship), that "to conceive a citizen of the United States who is not a citizen of some one of the States is totally foreign to the idea and inconsistent with the proper construction and common understanding of the expression as used in the Constitution, which must be deduced from its various other provisions. The object, then, to be attained by the exercise of the power of naturalization was to make citizens of the respective States.

"At the time of the adoption of the Constitution the States had power to make citizens of aliens. Does the clause of the Constitution above quoted deprive them of it?

"The true rule of construction as to the exclusiveness of the power of Congress is (1) that it must be granted exclusively; (2) forbidden to the States; (3) from the nature of the power its exercise by both must be incompatible and incongruous. Does the power now referred to come within either of these positions? If we examine the language closely, and according to the rules of rigid construction always applicable to delegated powers, we find that the power to naturalize, in fact, is not given to Congress, but simply the power to establish an uniform rule. The States are not forbidden to naturalize, nor is there anything in the exercise of the power by them incongruous or incompatible with the power of Congress to establish an uniform rule. That the States, if they choose to exercise the power as an original one, must abide by the rule which Congress makes, there can not be the slightest difference of opinion. The power given to Congress was, according to my apprehension, intended to provide a rule for the action of the States, and not a rule for the action of the Federal Government."

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pertains to the General Government." [Davis *v.* Hall (1818), 1 Nott & McCord, 292.] [a]

One of the clearest statements to be found in the State reports is given in the opinion of Assistant Vice-Chancellor Sandford in Lynch *v.* Clarke, supra. He says:

> But in reference to all foreign nations we stand as one single and united people, the United States of America. The right of citizenship, a right which is not only important as between the different States, but has an essential bearing in our intercourse with other nations, and the privileges conceded by them to our citizens is therefore not a matter of mere State concern. It is necessarily a *national right* and character. It appertains to us not in respect to the State of New York, but in respect of the United States.
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> * * * * * * *
>
> The provisions of the Constitution of the United States demonstrate that the right of citizenship, as distinguished from alienage, is a national right or condition, and does not pertain to the individual States. And while the Constitution recognizes the particular citizenship which I have mentioned (Cooper's Lessee *v.* Galbraith, 3 Wash. C. C. R., 546), it is evident that the subject of *alienage* must be controlled by the general and not by the local allegiance. The Constitution declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. (Art. IV, sec. 2.) The effect of this clause, in the first instance, was to bring within the fold of citzenship of the United States, and thus of each and every State, all who at the time of the adoption of the Constitution were by birth, adoption, or any of their discordant laws of naturalization, citizens of any one of the thirteen States. (See 3 Story's Com. on the Constitution, 674, 5, sec. 1800.) It made all alike citizens of the newly organized nation, and in this respect a homogeneous people. And the very necessity for such a provision to bring all upon a common platform exhibited in the strongest light the absolute need of guarding against different and discordant rules for establishing the rights of citizenship in future. We therefore find that one of the first powers conferred upon Congress was "*to establish an uniform rule of naturalization throughout the United States.*" (Art. I, sec. 8, par. 4.)
>
> A few brief considerations, out of many which force themselves upon the mind, will illustrate the position that the right of citizenship in its enlarged sense, was, after the adoption of the Constitution, not only a national right, but from the nature of the case it must from thenceforth be governed by the law of the whole nation and the acts of the National Legislature. The different colonies, while pursuing the same general policy, had manifested very diverse views in their legislation upon the subject of aliens. The same thing was apparent in the legislation of the respective States after the Declaration of Independence and during the Confederation. As early as the year 1782 Mr. Madison strenuously urged the adoption of a uniform rule of naturalization by the States. (Letter to Edmund Randolph, 1 Madison Papers, 161.) If the States were to be left to themselves, the same diversity would doubtless continue under the Constitution. One State would foster immigration, and confer on foreigners all the rights of citizens on their landing upon its shores, while another, with the same general object in view, but cherishing the ancient jealousy of aliens, would require a probation of many years before conferring those privileges upon the emigrant. Then under the clause of the Constitution which I have first cited interminable and harassing conflicts of State jurisdiction would have speedily ensued. These considerations are forcibly illustrated by Mr. Madison and Mr. Hamilton in the Federalist, Nos. 42 and 32. (And see 2 Madison Papers, 712; 3 Story's Com. on the Const., 3, secs. 1098, 1099.)
>
> The clause in the Constitution conferring upon Congress the power to establish an uniform rule of naturalization was designed to obviate the various evils which were justly anticipated from leaving the subject of citizenship to the control of the several States. Has it had the intended effect? It certainly has not,

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[a] See also State *v.* Manuel (1838), 4 Dev. & Bat., 20, 25; Rouche *v.* Williamson (1842), 3 Ired. L., 141, 145 (in which it was held that the acts of Congress on the subject of naturalization superseded the North Carolina statutes on the same subject); Lynch *v.* Clarke (1844), 1 Sandf. Ch., 583, 640; Stephens Petitioner (1855), 4 Gray, 559; In re Ramsden (1857), 13 How. Pr., 429, 431; In re Wehlitz (1863), 16 Wis., 443, 447.

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if there be any portion of the field of legislation on the subject left open to the action of the several States.

I will next inquire whether there be any such portion left to the States.

The Constitution went into full operation on the 4th day of March, 1789. The first Congress assembled under it, at its second session, exercised the power conferred upon that body by the Constitution, and on the 26th day of March, 1790, passed an act to establish a uniform system of naturalization. And from that time to the present there has been one or more acts of Congress regulating this subject constantly in force. After Congress exercised this power, it is well settled that it no longer fell within the scope of State legislation.

In Collet *v.* Collet (2 Dallas, 294), decided in 1792, in the United States circuit court in Pennsylvania, the judges held that the States still had a concurrent power of naturalizing, provided they did not contravene the legislation of Congress. But Judge Iredell expresed a contrary opinion in the same court as early as 1797, in the United States *v.* Villato (2 Dallas, 370). And in Chirac *v.* Chirac (2 Wheat., 259) the Supreme Court of the United States held that the power was exclusively in Congress.

The authors of the Federalist, in the numbers before cited, insisted that the power to naturalize must necessarily be exclusive, else there could be no uniform rule. And it seems now to be conceded on all hands that it is exclusive.

In Stephens, petitioner, supra, Shaw, C. J., briefly expressed the same view as follows:

We suppose it to be a position uncontested that by the Constitution of the United States power is vested exclusively in the General Government to grant letters of naturalization to foreigners, and that a similar power, formerly exercised by the respective State governments, has been superseded (Chirac *v.* Chirac, 2 Wheat., 269). If the State government, its courts, or magistrates have any authority on the subject, it must be derived from the General Government.

To the same effect is the opinion of Hoffman, J., in In re Ramsden:

In the next place, it appears to me that the power conferred is a power over the whole subject—the power exclusively to constitute citizens—not merely a power to prescribe how the State shall do so. To establish a rule of naturalization is to declare how aliens shall become citizens. It involves the whole power of effecting the object, as well as all details of its exercise. When, then, the people of the United States have said that Congress shall have that power and Congress exercises it, the right to accomplish it in any other mode or by any other body is superseded.

And Paine, J., in In re Wehlitz, supra, remarked that—

The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive and has always been held by this court to be so.

THEORIES ON WHICH THIS EXCLUSIVE POWER IS BASED.

The theory underlying the doctrine that the power to naturalize is exclusively in the Federal Government has been variously stated. Doubtless the earliest theory propounded was that of Hamilton in the Federalist, No. 32, quoted, supra, to the effect that—

This must necessarily be exclusive, because if each State had power to prescribe a *distinct rule* there could not be a *uniform rule.*

In Collett *v.* Collett, supra, the court announced that—

the true reason for investing Congress with the power of naturalization has been assigned at the bar. It was to guard against too narrow, instead of too liberal, a mode of conferring the rights of citizenship. Thus the individual States can not exclude those citizens who have been adopted by the United States, but they can adopt citizens upon easier terms than those which Congress may deem it expedient to impose.

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In a dissenting opinion in Houston *v.* Moore (1820), 5 Wheat., 1, 48, Mr. Justice Story made a statement of the principle in the following terms:

The Constitution containing a grant of powers, in many instances, similar to those already existing in the State governments, and some of these being of vital importance also to State authority and State legislation, it is not to be admitted that a mere grant of such powers in affirmative terms to Congress does per se transfer an exclusive sovereignty on such subjects to the latter. On the contrary, a reasonable interpretation of that instrument necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the States, unless where the Constitution has expressly in terms given an exclusive power to Congress, or the exercise of a like power is prohibited to the States, or there is a direct repugnancy or incompatibility in the exercise of it by the States. The example of the first class is to be found in the exclusive legislation delegated to Congress over places purchased by the consent of the legislature of the State in which the same shall be, for forts, arsenals, dock-yards, etc.; of the second class, the prohibition of a State to coin money or emit bills of credit; of the third class, as this court have already held, the power to establish an uniform rule of naturalization (Chirac *v.* Chirac, 2 Wheat., 258, 269). and the delegation of admiralty and maritime jurisdiction (Martin *v.* Hunter, 1 Wheat., 304, 337). And see the Federalist, No. 32.

(See also the question, supra, from the Passenger cases, Mr. Justice Woodbury's opinion.)

In the License cases [(1847), 5 How., 504, 584] Chief Justice Taney made the following comments:

And in the case of Chirac *v.* Chirac, 2 Wheat., 269, which arose under the grant of power to establish a uniform rule of naturalization, where the court speak of the power of Congress as exclusive, they are evidently merely sanctioning the argument of counsel stated in the preceding sentence, which placed the invalidity of the naturalization under the law of Maryland, not solely upon the grant of power in the Constitution, but insisted that the Maryland law was "virtually repealed by the Constitution of the United States, and the act of naturalization enacted by Congress." Undoubtedly it was so repealed, and the opposing counsel in the case did not dispute it. For the law of the United States covered every part of the Union, and there could not, therefore, by possibility be a State law which did not come in conflict with it. And, indeed, in this case it might well have been doubted whether the grant in the Constitution itself did not abrogate the power of the States, inasmuch as the Constitution also provided that the citizens of each State should be entitled to all the privileges and immunities of citizens in the several States; and it would seem to be hardly consistent with this provision to allow any one State, after the adoption of the Constitution, to exercise a power which, if operated at all, must operate beyond the territory of the State, and compel other States to acknowledge as citizens those whom it might not be willing to receive.

In Golden *v.* Prince [(1814), 3 Wash. C. C., 313, 324]. Washington, J., stated his reasons for regarding the power to naturalize as exclusively in the General Government, as follows:

The subject of naturalization is strongly illustrative of the principles which this course of reasoning is intended to prove. The power to pass laws upon this subject is found in the same section, and is expressed in words of the same import, with that respecting bankruptcies. Now, suppose Congress, deliberating whether the naturalization of foreigners ought, upon any, or upon what terms, to be allowed—that the deliberations of that body should result in the conviction that the natural population of the country is most conducive to the public interest, and therefore that no encouragement ought to be given to the migration of foreigners to the United States. In what manner is this policy to be rendered effectual? Congress can not, for the purpose of preventing the State legislatures from interfering in this business, pass a negative law, declaring that foreigners shall not be naturalized: because if the Constitution forbids the exercise of such a power by the State legislatures, such a law would be worse than unnecessary;

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and if it does not forbid it, then it would be void. Nothing, then, would remain for that body but, as in the former case, to do nothing.

This, then, according to the argument on the part of the defendant, would be the signal to the State legislatures to commence their operations. Virginia, for example, is of opinion that, for the purpose of settling her extensive waste and uncultivated lands, the migration of foreigners to that State ought to be encouraged by every means; and in order to favor this policy she declares that the residence of a year or a month, without any other restriction whatever, shall be sufficient to entitle all foreigners to the right of naturalization in that State. They are accordingly made citizens, and, after the constitutional period, are chosen to represent the people of that State in the national legislature, and, emigrating to the other States, with the Constitution in their hands, they claim all the privileges of natural-born citizens of those States.

The other States might well complain that, although the people had declared their willingness to admit foreigners to the privileges of natural-born citizens, provided the regulations under which this admission is granted were formed by the united wisdom of the representatives *of all the States*, yet they had never granted or intended to grant to one State the right of legislation over the other States. They might contend that the introduction of foreigners to the electoral franchise, and still more into the national legislature, was an experiment dangerous to the tranquillity and the welfare of the nation; that they might be tainted with principles unfriendly to our republican institutions, and with foreign attachments wholly incompatible with their duties as citizens and legislators; that if admitted at all, they should not only abjure all allegiance to any foreign government, and, if of the order of nobility, should renounce all claim to the same; but that they ought to be men of good moral character, and attached to the Constitution of the United States, and, finally, that the grant of this privilege should be preceded by a probationary residence in the United States for a length of time sufficient to afford the necessary proof of the reality of these qualifications in the applicant.

These quotations will be sufficient to indicate the range taken by the courts in their discussions. An obvious and simple reason for it may be thus put: If there is to be a citizenship of the United States the United States should determine upon what terms it may be acquired.

SECTION 2.—*Courts that may naturalize.*

The earliest as well as the later statutes passed by Congress on the subject of naturalization contain more or less specifications as to the courts that might naturalize aliens. The act of 1790 provided that the proceedings might be taken before "any common-law court of record." The act of 1795, which repealed the act of 1790, provided that the proceedings be "before the supreme, superior, district, or circuit court of some one of the States or of the Territories northwest or south of the river Ohio or a circuit or district court of the United States." This act was in turn repealed by the act of 1802, which, after specifying the United States courts which might naturalize aliens, provided—

that every court of record in any individual State having common-law jurisdiction and a seal and clerk or prothonotary shall be considered as a district court within the meaning of this act.

It is under this latter act that nearly all the litigation involving its subject-matter has arisen.

A. Composition of courts.—One of the first questions that arose under the statute of 1802 was as to the meaning of the provision regarding clerks. The earliest case found in which is discussed the necessity of a clerk for a naturalizing court is that of Ex parte Cregg [(1854), 2 Curtis, 98, 99], where it appeared that the petitioner had applied for naturalization to the police court of the city of Lynn,

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Mass., a court having no separate person performing the duties of clerk, but only a judge who acted in the capacity of both judge and clerk. In declaring that a court so constituted was not within the terms of the Federal statute, Judge Curtis said:

We are of opinion that the police court of Lynn, in which the justice was the recording officer, was not a court having a clerk within the meaning of the act of Congress. Certainly it does not come within the terms of that act, which clearly imply that there may be courts of record having a seal and common-law jurisdiction but no clerk or prothonotary, and that such courts are not included by the act. Yet how could this be if it were enough that the presiding justice should himself record the proceedings A court of record necessarily requires some duly authorized person to record the proceedings. When the act speaks of courts of record it speaks of courts whose proceedings are duly recorded by authorized persons, and when it says "having a clerk or prothonotary," it superadds the requirement that those proceedings shall be recorded by one of those officers. Unless the act be so construed, the requirement of a clerk or prothonotary would have no meaning. The act would have the same construction as if it were stricken out, because the words court of record would carry with them the necessity of having the proceedings recorded by some one by authority of law. Nor do we consider it a vain and useless precaution to confine the power to naturalize aliens to courts in which one of those officers is found.

The question had been, indeed, discussed in a State court ten years earlier, in Ex parte Gladhill [(1844) 8 Met., 168], but as a statute subsequent to that creating the court had expressly provided a clerk for the court the point did not come up for decision. In the course of his opinion, however, Shaw, C. J., remarked that the court must have a permanent "recording officer charged with the duty of keeping a true record of its doings and afterwards of authenticating them."

The same point came up later with reference to the powers of a county court in Nebraska, in that case it being sought by mandamus to compel the judge, who also acted as clerk, to receive an alien's declaration of intention to become a citizen. The court, following the opinion of Judge Curtis in Ex parte Cregg, refused the mandamus on the ground that the judge was not a clerk within the meaning of the Federal statute. (State *v.* Webster, 1878, 7 Nebr., 469.)

Subsequently to the Cregg case the question came up in the circuit court for New Hampshire in an anonymous case before Judges Clifford and Clark, who rendered a decision directly opposed to Ex parte Cregg. But the case appears never to have been reported, and the New Hampshire courts have since followed the Cregg case, although the anonymous case was before them. (State *v.* Whittemore, 1870, 50 N. H., 245.)

The point has also arisen whether the recorder of a municipal court was a clerk within the meaning of the Federal statute. Dean, petitioner (1891), 83 Me., 489. Whitehouse, J., in an opinion holding the affirmative, laid down the following as the principles controlling in such matters:

The language of this statute seems to imply that there may be courts of record having common-law jurisdiction and a seal without a clerk, and that such courts are not embraced by the terms of the act. And this is the construction it has received from eminent judicial authority. The court must have a clerk distinct from the judge, not necesarily an officer denominated clerk, but a permanent "recording officer charged with the duty of keeping a true record of its doings and afterwards of authenticating them." (Shaw, C. J., Ex parte Gladhill; Ex parte Craig, and State *v.* Whittemore, supra.) The court contemplated by the act of Congress has an organized existence; it is impersonal; the judge is one of the constituent parts of the organization; the clerk is another

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and a separate and independent element. The essential function of the clerk is to make and keep the records and give them legal verification by his attestation and the use of the seal.

By those sections of the act establishing the municipal court of Biddeford above quoted the responsible duty of making and keeping the records of the court is imposed upon the judge and not upon the recorder. There is no duty of making and keeping the records imposed upon the recorder by law. He is to keep the records of the court only when requested so to do by the judge. Furthermore, the recorder of this court can not authenticate by his attestation any copies of records "made and kept" by the judge, or kept by himself at the request of the judge. Only such copies of the records as are "duly certified by the judge shall be legal evidence in all courts." The authority to appoint a recorder was conferred upon the judge, not for the purpose of creating a fixed and permanent clerical office distinct and separate from that of the judge, but primarily to provide for the judge a substitute who should be empowered to act in his stead in the contingencies named in the act "His signature as recorder is sufficient evidence of his right to act instead of the judge." When thus acting in the judicial capacity, exercising the powers and performing the duties of the judge, the recorder is the court, and must personally make, keep, and authenticate the records of the court. The recorder's court has no clerk other than the recorder himself. Accordingly, in the attestation of the copy of William Dean's declaration of intention, the signature of "Edwin J. Cram, recorder," by the very terms of the act is presumptive evidence that he was acting instead of the judge in some of the contingencies named in the act.

It would seem from these authorities that the term "clerk" in the Federal statute must be understood to mean a clerk of a court according to the usual judicial understanding of the term. He must be a separate individual, holding an office which has distinct and well-defined duties. It is not necessary, however, that the actual work of the clerk be performed by the clerk himself. It has been held entirely sufficient that it be performed by a deputy acting for the clerk. (State *v.* Hoeflinger, 1874, 35 Wis., 393.*)

B. Jurisdiction of courts.—As indicated in the statutes set out at the beginning of this section, a court in order to naturalize must be a court of record having common-law jurisdiction; and questions as to the meaning of each of these phases have frequently arisen.

In Ex parte Gladhill (1844), 8 Met., 168, the question was whether or not the police court of Lowell was a court of record within the description of the act of Congress. In finding for the petitioner Chief Justice Shaw expressed himself thus:

It possesses all the characteristics of a court of record. It is to be holden by a learned, able, and discreet person to be appointed and commissioned by the governor pursuant to the constitution. In general, all judicial officers by the constitution hold their offices during good behavior, except justices of the peace, whose office is limited to the term of seven years. There is a provision, section 8, for the appointment of special justices to hold the court whenever the standing justice shall be interested in any suit or prosecution, or shall be unable, from any cause, to hear and determine any matter pending in said court. This indicates the establishment of a court, or judicial organized tribunal, having attributes and exercising functions, independently of the person of the magistrate designated generally to hold it, and distinguishes it from the case of a justice of the peace on whom, personally, certain judicial powers are conferred by the law.

We have no doubt it is a court of record. Section 6 directs the keeping of a fair record and a subsequent act, cited hereafter, authorizes the appointment of a clerk for the same purpose.

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*An obvious limitation exists on this principle, viz, that there must be authority for the appointment of a deputy. See Carter *v.* Territory, 1859, 1 New Mex., 317, 344, on question of certifying declarations of intention to retain Mexican citizenship under treaty of Guadaloupe Hidalgo.

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And this is in harmony with the language of Curtis, J., in Ex parte Cregg, supra, where he said:

A court of record necessarily requires some duly authorized person to record the proceedings. When the act speaks of courts of record it speaks of courts whose proceedings are duly recorded by authorized persons; and when it says, "having a clerk or prothonotary," it superadds the requirement that those proceedings shall be recorded by one of those officers. Unless the act be so construed, the requirement of a clerk or prothonotary would have no meaning. The act would have the same construction as if it were stricken out; because the words "court of record" would carry with them the necessity of having the proceedings recorded by some one by authority of law.

This statement of the law received the approval of Smith, J., in State *v.* Whittemore, supra.

In Mills *v.* McCabe, 1867, 44 Ill., 194, 196, the question arose as to whether or not the marine court of the city of New York, which was created by the act of the general assembly of the State of New York, was a court of record within the scope of the Federal statute. The court had a clerk and a seal, and it had common-law jurisdiction to the extent of $500. The court made the decision turn on whether or not such a court was considered one of record by the courts of New York. As to that, the court in question had been held by the local courts in one case to be a court of record for some purposes, though not considered authorized to give judgment on default; another case had decided it was not a court of record; a third had declared that the proceedings were informal, the pleadings being oral with nothing that in technical strictness was a judgment roll, the judgment record being a mere justice's docket; and further that there could, therefore, be no bill of exceptions from its judgment. Having stated this the Illionis court proceeds:

The question, however, seems to have been settled by the court of appeals in New York in the case of Huff *v.* Knapp, 1 Selden, 65, where it was held that this marine court was not a court of record in the strict legal sense of the term. The court says that it may be called a statutory court of record having certain powers of such a court expressly given it by statute and none others, and hence it had none of the incidental powers of a court of record. Having been decided by competent authority to be a court of record only to the extent that it was so declared by statute, and not to possess other powers incident to such a court, we are not authorized to hold it a court of record. A fair and reasonable construction of the act of Congress requires us to hold that only a court of record for general and not special purposes was intended to be embraced. The act has not declared that a court of record for some purposes only shall be invested with such jurisdiction. Nor do we think such can be held to be the legislative intention.

SEAL.

As to the requirement of a seal, while no case squarely adjudicating the question has come before the court, in Ex parte Gladhill, supra, Chief Justice Shaw commented upon this matter as follows:

The police court, being vested with the same power that is given to a justice of the peace, has power to use a seal. Whenever the statutes have prescribed the forms of writs and processes issued by justices of the peace (as they have done in many cases), a seal is a part of the form of process thus prescribed; and when a court has not, by any rule or order, adopted any particular form of seal, any seal sanctioned by the court is a sufficient seal.

COMMON-LAW JURISDICTION.

As to the meaning of the phrase "common-law jurisdiction," the decisions have been far less uniform than on the force of the requirement as to a court of record. The usual question that comes before

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the courts in this connection is whether or not a court of *limited* common-law jurisdiction is within the meaning of the statute. As set out above, it has been finally settled, apparently, that only a court of record in the full and strict sense will satisfy the statute. But, as will be seen, the interpretation of the statute is less rigorous with reference to the jurisdiction.

Of course the first point to be determined in discussing the general topic is the meaning of the phrase "common law." Story, J., in Parsons *v.* Bedford, 1830, 3 Peters, 433, 446, stated definitely thus: "The phrase 'common law found in this clause [which related to trial by jury] is used in contradistinction to equity and admiralty and maritime jurisprudence," and this has been generally adopted by the courts, both Federal and State. With reference to the phrase "common-law jurisdiction" itself, one of the earliest cases in which the matter was up for judicial determination is Ex parte Gladhill, supra, in which Shaw, C. J., made the following statement:

> That this court exercises a common-law jurisdiction there is no doubt. It is authorized to hear and determine all complaints and prosecutions in like manner as justices of the peace and has jurisdiction of all civil suits and actions cognizable by a justice of the peace.

Among the other more important early cases in which the matter was discussed and disposed of there should be mentioned Ex parte Burkhardt, 1856, 16 Tex., 470; People *v.* Sweetman, 1857, 3 Parks Crim. Rep., 358, 371; Morgan *v.* Dudley, 1857, 18 B. Monroe, 693, 722; People *v.* Pease, 1860, 30 Barb., 588, 603; and In re Conner, 1870, 39 Cal., 98, 100.

The last case contains one of the clearest statements on the matter to be found. The court said:

> The term "common-law jurisdiction" is capable of no other meaning than jurisdiction to try and decide causes which were cognizable by the courts of law under what is known as the common law of England. Our judicial system having been modeled chiefly after that of England, we have adopted the nomenclature which prevailed in her courts. Hence, when we speak through our statutes and courts of common-law actions, proceedings at common law, and common-law jurisdiction, we mean such actions, proceedings, and jurisdiction as appertain to the common law of England as administered through her courts.

But this statement of the principle does not dispose of the matter. The further question, clearly stated, has arisen, whether the common-law jurisdiction must be unlimited, and in all the cases cited above the courts have reached the conclusion that this is not necessary and that it is entirely sufficient if the court exercises any common law jurisdiction at all. Accordingly, in People *v.* Sweetman, supra, it was held sufficient that a county court had "exclusive jurisdiction" in the common-law actions of trespass that were commenced in a justice's court (the title to land being in question), although, as the court said, the tribunal had been "shorn of much of its power" by the State constitution. In People *v.* Pease, supra, it was shown that a county court might hear suits commenced in a justice's court whenever it appeared in the answer of the defendant that the title to lands had come in question, that it had jurisdiction in matters of partition and proceedings to admeasure dower, "with other powers not enumerated." This was held sufficient. In In re Conner, supra, the fact that the court might abate a nuisance under proper proceedings was relied upon as giving jurisdiction. In this case, too, a further question arose as to whether it must be unlimited jurisdiction

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with reference to certain classes of actions, and the court held that not only might the number of actions themselves be limited, but that a further limitation restricting the jurisdiction as to the amount involved in those cases in which the court might act was not fatal to the jurisdiction of the court for purposes of naturalization. The court said:

> But the act of Congress does not require that the courts shall have *all* the common-law jurisdiction which pertains to *all* classes of actions. It is enough that it has "common-law jurisdiction."

In United States *v.* Powers, 1877, 14 Blatchf., 223, the city court of Yonkers was held to possess the requisite powers, since the State law had conferred—

> upon this court civil jurisdiction in all actions for the recovery of money when the amount recovered does not exceed $1,000.

The court continued:

> It is manifest that by virtue of these statutory provisions the city court of Yonkers is authorized to exercise some common-law jurisdiction—that is, it has jurisdiction to hear and determine causes which were cognizable by the courts of law under what is known as the common law of England, although it has not jurisdiction of all such causes. It will be noticed, however, that the statute of the United States does not require of courts authorized to entertain applications for naturalization that they shall have all the jurisdiction possessed by any court of law. If the court may exercise any part of that jurisdiction, it is within the language of the statute and within its meaning as well.

In People *v.* McGowan, 1875, 77 Ill., 644, the court held, overruling the earlier case of Knox County *v.* Davis, 1872, 63 Ill., 405, that the limited common-law jurisdiction of the criminal court of St. Louis was sufficient, and suggested as among the common-law powers of the court the power to issue writs of habeas corpus, to administer oaths, take and certify recognizances, and to exercise all the powers of an examining magistrate.

The matter has quite recently been before the Federal courts in United States *v.* Lehman, 1889, 39 Fed., 49, and the question was raised whether or not the fact that the jurisdiction was entirely conferred by statute prevented the same from being considered common-law jurisdiction within the statute. The court said:

> The jurisdiction of all the courts in this and other States is defined with greater or less particularity by statute, and in that sense their jurisdiction is statutory. But, as is well known, certain courts in this, as well as in other States, have power to punish offenses that existed at common law and to enforce private rights and to redress private wrongs recognized by the common law, and in the exercise of that power their action is governed by the principles, rules, and usages of the common law in so far as they have not been modified or abolished by statute. Courts of this description are usually termed "courts of common-law jurisdiction" to distinguish them from other inferior tribunals organized to enforce local or municipal regulations or rights and duties not recognized by the common law. * * * Congress intended to confer the power of naturalization on all courts of record of the several States that have power to administer justice under and in accordance with that system of jurisprudence known as the common law. In re Conner, 39 Cal., 98. Tried by such test, the court of criminal correction has power to naturalize aliens.

This expression has been reaffirmed in the recent case of Levin *v.* United States, 1904, 128 Fed., 826, in which the authorities are collected and examined.

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However, some courts have seemed to reach different results. In ex parte Tweedy, 1884, 22 Fed. Rep., 84, the question was whether the probate court of Shelby County was authorized to take a declaration of intention. Here, as in United States *v.* Lehman, the powers of the court were entirely statutory, the statute having conferred on the court concurrent jurisdiction for "the allotment of dower," "original jurisdiction over bastardy and bastards," and "concurrent jurisdiction for the partition or sale of estates." In his opinion, Hammond, J., reasoned that the State legislature had recognized three sources of law—the common law, the English statute law, and the acts of assembly. He then declared that the powers specified as belonging to the court in question, though very ancient, were given to the courts in England by express statute; therefore, he reasoned, they came within the heading English statute law as recognized by their legislature, and were not properly part of the common law. And this being established, it followed, he argued, that courts exercising these powers only were not exercising common-law jurisdiction within the meaning of the Federal statute. It would seem that, although the court's argument may be technically sound, it can not be considered when judged by the great weight of authority, as in accord with the spirit of the statute.[a]

In Ex parte McKenzie, 1897, 51 South Carolina, 244, 246, an alien applied for naturalization to the supreme court of the State. After considerable discussion, the court decided it did not possess the necessary jurisdiction, and based its decision upon the following line of reasoning: That while the court had power, under the authority of the legislature, to issue certain prerogative writs, its principal work was to hear and determine appeals in cases of chancery and to correct "errors at law" under statutory regulation, which was not common-law jurisdiction in the contemplation of the statute. To an insistent counsel, who contended that the court exercised common-law jurisdiction, the court said:

> While it is true that this court may exercise common-law jurisdiction *in certain cases*, or, to speak more correctly, may apply the principles of the common law to cases which fall within its jurisdiction as defined by the constitution and laws of this State, it is not true that this court has common-law jurisdiction in any case which parties may desire to bring before it.

It would seem that this decision is directly against that of United States *v.* Lehman, supra, and that the latter more nearly corresponds to the legislative intent. Indeed, in the recent case of Levin *v.* United States (1904), 63 U. S. C. C. A., 476, the court to establish proper jurisdiction relied upon the facts, first, that the court, by statute, had appellate powers in certain specified cases, and, secondly, that it might issue the prerogative writs of habeas corpus, quo warranto, mandamus, certiorari, "and other remedial writs," which the court considered common-law writs, and so involving common-law jurisdiction.

The recent statute of 1906 provides that all courts having "jurisdiction in actions at law or equity or law and equity in which the amount in controversy is unlimited shall have power to naturalize aliens." While, as is obvious, this extends the powers to courts in

[a] See the remarks of Sandborn, circuit judge, in Levin *v.* United States (1904), 63 U. S. C. C. A., 476, 483.

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chancery, and so would include such a court, for instance, as was in question in Ex parte McKenzie, supra, it requires that the amount in controversy be unlimited, and so would exclude the court under consideration in United States *v.* Power, supra. The statute leaves open the questions of partial jurisdiction, both in law and in equity.

C. Enumeration of courts.—It is obvious from the cases collected above that in every case, to determine whether or not a court has power to naturalize, it will be necessary to examine the powers of the particular court and to go to the statute which created it to learn the extent of its jurisdiction. The following courts have, however, been held to possess the requisite authority: City courts—Lexington city court, Morgan *v.* Dudley, 1857, 18 B. Mon., 693; city court of Yonkers, United States *v.* Power, 1877, 14 Blatchf., 223; city court of Savannah, Headman *v.* Rose, 1879, 63 Ga., 458. Police courts—Ex parte Gladhill, 1844, 8 Met., 168; State *v.* Whitemore, 1870, 50 N. H., 245. Criminal court of St. Louis—People *v.* McGowan (overruling Knox County *v.* Davis, 1872, 63 Ill., 405 contra); United States *v.* Lehman, 1889, 39 Fed., 49. County courts—In re Conner, 1870, 39 Cal., 98; People *v.* Pease, 1858, 30 Barb., 589; Ex parte Burkhardt, 1856, 16 Tex., 470; People *v.* Sweetman, 1857, 3 Park. Crim., 358; Beardstown *v.* Virginia, 1876, 81 Ill., 541; United States *v.* Severino, 1903, 125 Fed., 949; court of common pleas, Beavins, petitioner, 1856, 33 N. H., 89; Portier *v.* Le Roy, 1794, 1 Yeates (Pa.), 371; the marine court of the city of New York, Mills *v.* McCabe, 1867, 44 Ill., 194; the court of appeals of St. Louis, Levin *v.* United States (1904), 63 U. S. C. C. A., 476; district court, Crœsus Mining, etc., Co. *v.* Colorado Land, etc., Co. (1884), 19 Fed., 78; Ex parte McKenzie, 1897, 51 S. C., 244, held that a supreme court had no authority to naturalize; and Ex parte Tweedy, 1884, 22 Fed., 84, held the same with reference to a probate court.

As suggested, the jurisdiction of each court must be examined before its powers as to matters of naturalization can be determined, and any court, whatever its name, that has the power may naturalize aliens. Levin *v.* United States (1904), 128 Fed., 826.

D. Capacity in which the State courts act.—Not a little discussion has been had on the question as to the capacity in which the State courts act when proceeding under the authority of the Federal statute in matters of naturalization. On this question, as on the question of the meaning of the term "Common-law jurisdiction," there are two lines of authority.

In People *v.* Sweetman, 1857, 3 Park. Cr., 358, Bacon, J., stated:

> On the first point I entertain no doubt that the county court has jurisdiction to naturalize aliens. The act of Congress adopts every State court as its agent to do this service that is a court of record and has a common-law jurisdiction and a seal and a clerk.

In the same case Pratt, J., said:

> Without attempting to examine the question in regard to the power of the Federal Government to confer such jurisdiction upon State courts and magistrates, it seems to me quite clear that, in entertaining such proceedings, they are exclusively under the laws of the United States, and should be deemed *quoad hoc* courts of the United States.

Freedman, J., in In re Christern, 1878, 43 N. Y. Sup. Ct. (11 Jones & Spencer), 523, 527, adopts the language of Pratt, J., as given above.

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In In re Ramsden 1857, 13 How. Pr., 429, 435, Hoffman, J., used practically the same language as used by Bacon, J., above. He said:

> Congress adopts the State tribunals as the agents to exercise the power as they would have performed it before. The concurrence of the State legislatures, expressed or fairly implied, adds the sanction of the State to this delegation of power. Whether such tribunals are bound to act may admit of controversy. That their acts are lawful, if they do so, seems undeniable.

And see, in general, the earlier case of Stephens, Petitioner, 1855, 4 Gray, 559.

Other courts have held in effect directly opposite, Rump *v.* Commonwealth, 1858, 30 Pa. St., 475, and the theory behind their rulings seems based upon the proposition that until Congress acted the State courts had power to naturalize aliens—

> and this jurisdiction has never been taken away. * * * And although such cases arise under the Constitution and laws of the United States, yet, because these are part of the law of the land, and merely give the rule for the exercise of our admitted State functions, our State courts may entertain this jurisdiction.

In State *v.* Whittemore, 1870, 50 N. H., 245, the court had before it and examined both Rump *v.* Commonwealth, supra, and People *v.* Sweetman, supra, and after examining both cases decided to follow the former. All these decisions were referred to in the Supreme Court of the United States in In re Loney, 1889, 134 U. S., 372, 376, and while the point involved in those cases was not before the Supreme Court, Mr. Justice Gray, in delivering his opinion, did advert to them and in a way give them his sanction. The question has usually arisen in proceedings for the punishment of perjury committed in connection with some of the naturalization papers of an alien, the point being whether a State court might punish such perjury, or whether it could be punished only in the Federal courts. These cases are collected in the notes below, from which it appears that decisions are both ways, with the latest case standing for punishment by the State.[a]

It is, however, proper to refer specially to one recent decision in wich the question has received very elaborate consideration, United

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[a] Holding that perjury committed with reference to naturalization proceedings is punishable in the State courts, see State *v.* Whittemore, 1870, 50 N. H., 245; Rump *v.* Commonwealth, 1858, 30 Pa. St., 475 (both sanctioned in In re Loney, 1889, 134 U. S., 372, 376). Holding that it is punishable in the State courts only, see United States *v.* Severino, 1903, 125 Fed., 949. Holding that it is not punishable in the State courts, see People *v.* Sweetman, 1857, 3 Park. Cr., 358. Holding that it is punishable in the Federal courts, see United States *v.* Walsh, 1884, 22 Fed., 644; United States *v.* Lehman, 1889, 30 Fed., 49; United States *v.* Jones, 1877, 14 Blatchf., 90; United States *v.* Burley, id., 91; United States *v.* Power, id., 223. For declarations that it is immaterial, that it may be punished by both State and Federal authorities, see State *v.* Whittemore, supra; Rump *v.* Commonwealth, supra.

One is not guilty of perjury within the statute who swears to an extradicial paper; State *v.* Helle, 1834, 2 Hill (S. C.), 290 (where the applicant swore falsely to his own residence, the statute providing that such oath should not be evidence of the applicant's residence); United States *v.* Grottkau, 1887, 30 Fed., 672 (same point).

On the question of the power of the Federal Government to punish for fraud in connection with the proceedings for naturalization, see United States *v.* Tynen, 1870, 11 Wall., 88; and concerning Federal punishment for the sale of certificates, see United States *v.* Ragozzini, 1892, 50 Fed., 923.

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States *v.* Severino, 1903, 125 Fed., 949, where, after an exhaustive examination of the authorities and the principle, the court said:

> It is concluded that State courts while entertaining jurisdiction in naturalization proceedings remain State courts, and that perjury committed by a witness in such proceeding is punishable by the sovereignty whose justice it offends (that is, the State court), and that the Federal court can not entertain jurisdiction in the absence of a Federal statute conferring it.

The court expressly declined to examine the theory "whereby Congress was able to permit the State courts to share with the Federal courts jurisdiction in matters of naturalization."

But whatever the capacity in which the State courts act while naturalizing aliens, it seems entirely clear that they are beyond co ersion by the Federal Government. In Stephens Petitioner, supra Shaw, C. J., delivering the opinion, said:

> These powers [to naturalize] given to State courts are therefore naked powers which impose no legal obligation on courts to assume and exercise them, and such exercise is not within their official duty or their oath to support the Constitution of the United States.
>
> But whatever may be the authority of Congress to require the performance of duties by State courts, magistrates and officers not affecting the organization of the National Government or not expressly provided for by the Constitution (respecting which there may be some doubt), it is well established that such courts and magistrates may, if they choose, exercise the powers thus conferred by Congress unless prohibited by State legislation.

The same principle was laid down by Judge Simpson in Morgan *v.* Dudley, supra. He said:

> When, however, we admit that Congress can not *authoritatively* confer judicial powers on State courts we only mean that Congress can not compel them to entertain jurisdiction in any case or to perform any judicial act. But we do not mean that Congress can not empower them to perform any judicial act to which they are competent and for the performance of which they have an adequate inherent jurisdiction.

And in Rushworth *v.* Judges of Hudson Pleas, 1895, 58 N. J. Law, 97, Van Sycle, J., after an examination of the early authorities, concludes that the doctrine is well founded that Congress can not compel a State court to entertain jurisdiction in any case, including that of naturalizing aliens. And see State *v.* Penny, 1850, 10 Ark., 621; Beavins Petitioner, 1856, 33 N. H., 89, 94; and In re Ramsden, supra.

Moreover, the States have considerable power over their own courts in questions relating to naturalization. For instance, it is held that they may indicate certain courts as those proper to exercise the jurisdiction conferred by Federal statute. In Beavins Petitioner, supra, a law restricting the powers as to naturalization to the court of common pleas was held to be entirely proper and within the power of the State legislature. In Gilroy Petitioner, 1895, 88 Me., 199, a law providing that no courts except the supreme, judicial, and superior courts should entertain jurisdiction over the naturalization of aliens was declared a legitimate exercise of the legislative power in this matter, and in State *v.* Whittemore, supra, the court uses the following language:

> The question now presented must depend exclusively on the construction to be given to this act of Congress. The State legislature may prohibit a State court, which comes within the class of tribunals described in the United States act, from exercising jurisdiction in naturalization cases.

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Further, not only may the State indicate the courts that shall exercise the jurisdiction, but it may designate the time within which it may be exercised. For instance, a statute providing that courts should not naturalize aliens "within thirty days next preceding any national, State, municipal, general, special, local, or charter election," was held to be a proper exercise of legislative power. Rushworth *v.* Judges, supra.

On the other hand, it is equally clear that the State court may not confer jurisdiction. In State *v.* Whittemore, supra, the court said:

> But the State can not confer that jurisdiction on any tribunal which does not come within the terms of the United States statute. All statutes of this State attempting to confer this power on the police court of Nashua must, therefore, be laid out of the case, the solitary question being whether that court has this power under the United States statute.

And in In re Ramsden, Hoffman, J., declared that—

> These statutes can not be considered as conferring a power to naturalize, which I hold the State legislatures are incompetent, even by the most explicit words, to bestow.

On this point there seems to be a practical unanimity of opinion.

SECTION III.—*Requirements for naturalization.*

A. WHO MAY BE NATURALIZED.

The earliest statutes provided for the naturalization of free white persons, and this was substantially the law until the adoption of the fourteenth amendment and the passage of legislation connected with it, when it was by express terms made to include the negroes. A number of questions have arisen, however, as to the meaning of the statute, and under the rights of citizenship of individuals the following races have been determined:

(*a*) *Indians—Early status.*—Our earliest naturalization law provided that an alien to be naturalized must be a free white person, and this was substantially the requirement until after the civil war. The fourteenth amendment did not in terms include Indians, and the act of 1866 expressly excluded them when not taxed. Thus by early statutes Indians may not become citizens. A recent decision in Alaska (In re Burton, 1900, 1 Alaska, 111) confirmed this by deciding (what is, indeed, obvious) that an Indian is not a "free white person or an alien of African nativity or African descent," and that, therefore, unless there were some special legislation on the matter, an Indian could not be naturalized as a citizen of the United States, the Indian in this case being a native of British Columbia who had emigrated into the United States.

Citizenship has, however, in many cases been conferred on Indians by treaty entered into with the tribe itself or by a foreign government—e. g., treaty of Guadalupe-Hidalgo. For reference to such treaties see Part I, Chapter I, section 1, A. Moreover, as there indicated, Congress has at different times passed statutes which provide that upon an individual Indian's forsaking his tribal relationships, habits, and customs, and adopting civilized methods of life he shall be considered a citizen. See (in addition to references given above) act of May, 1890, section 43 (26 Stat. L.); act of February, 1887,

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secton 3 (24 Stat. L.); act of August, 1888 (25 Stat. L.). The fact is, Congress exercises complete control over Indians and Indian affairs, and so may legislate in accordance with or opposition to the generally accepted laws on the matter of citizenship.[a]

(*b*) *Africans.*—No question can be raised under the early laws as to the right of foreign-born Africans to become citizens. The act of 1790 provided that to be naturalized the alien must be "a free white person." The repealing act of 1795 had the same provision as did the acts of 1802, 1804, 1824, and 1828. The act of 1870 extended naturalization "to aliens of African nativity and to persons of African descent." Section 2169, Revised Statutes, provides—

> The provisions of this title shall apply to aliens (being free white persons, and to aliens) of African nativity and to persons of African descent.

This was not repealed by designation in the recent statute of 1906, and inasmuch as it is not inconsistent with the general provisions of that statute it would seem that the general repealing clause as to matters inconsistent would not affect it. Therefore, by statute, negroes may to-day be naturalized.

Moreover, the fourteenth amendment declared, section 1—

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.[b]

Thus by legislation and constitutional amendment the African stands, with reference to naturalization, on the same footing as "aliens, being free white persons."

(*c*) *Chinese.*—The statutory provisions already given, providing that for naturalization, with the one exception of Africans, the alien must be a free white person, has been held to exclude Chinese from naturalization.

The earliest case in which the question arose was in In re Ah Yup, 1878. 5 Sawy., 155, 159, where the court went into a discussion of the meaning of white person, as used in the naturalization laws, and decided that it could not be used in so comprehensive a way as to include the Mongolian race. In reaching this conclusion he examined, not only scientific works on ethnology, but the debates in Congress concerning the naturalization act. He thus concludes this examination:

> Thus, whatever latitudinarian construction may otherwise have been given to the term "white person," it is entirely clear that Congress intended by this legislation to exclude Mongolians from the right of naturalization. I am therefore of the opinion that a native of China, of the Mongolian race, is not a white person within the meaning of the act of Congress.

In the year following the result seems to have been reached in a case decided by Choate, J., in the United States circuit court for

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[a] As to the nature of the so-called naturalization laws passed by Congress with reference to the Indians, it is of interest to note that in United States *v.* Rhodes, 1866, 1 Abb. U. S., 45, the court remarked: "To make one of domestic birth a citizen is not naturalization."

[b] The courts have repeatedly declared that the fourteenth amendment conferred citizenship upon emancipated negroes. See Strouder *v.* West Virginia, 1879, 100 U. S., 303; Virginia *v.* Rives, id., 313; Ex parte Virginia, id., 339; Matter of Turner, 1867, 1 Abb. U. S., 84; United States *v.* Canter, 1870, 2 Bond., 389; United States *v.* Petersburg (—), 1 Hughes, 493; Hall *v.* Decuir, 1877, 95 U. S., 485, 508; Anthony *v.* Halderman, 1871, 7 Kans., 50; Burney *v.* State, 1872, 48 Ala., 195.

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New York, July, 1879, on Charles Miller's application. This case appears never to have been reported, but is commented upon in an article by Alexander Porter Morse, "Citizenship by naturalization," in the American Law Register for November, 1879, page 673. Mr. Morse states, however, that he has—

> been informed that Yung Wing, of the Chinese embassy at Washington, and other natives and subjects of the Emperor had been previously naturalized.

Since In re Ah Yup the courts seem universally to have accepted the views there taken. In 1878 a Nevada court had reached the same result, and that, too, without the Ah Yup case being before it. But the whole question was, however, put beyond judicial determination by the Congressional act of 1882, which provided, section 14—

> That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

The case in Sawyer has been followed quite recently in In re Hong Yen Chang, 1890, 84 Calif., 163, in which the court refused to recognize a certificate of naturalization granted to a Chinaman by a New York court, the court declaring that the certificate was void on its face. A Federal court in 1895, in In re Gee Hop. 1895, 71 Fed., 274, reached the same result with reference to a certificate of naturalization granted by a court in New Jersey.

The principle that a Mongolian may not become a citizen of the United States has also been recognized in the cases cited and discussed above under the heading "Naturalization by birth where the parents may not become citizens."

(*d*) *Japanese.*—By a parity of reasoning the courts have refused to recognize natives of Japan as within the expression of the naturalization laws. The earliest case is that of In re Saito, 1894, 62 Fed. Rep., 126, 128, in which it was declared that the Japanese, like the Chinese, belong to the Mongolian race, and therefore that—

> whether this question is viewed in the light of Congressional intent, or of the popular or scientific meaning of "white persons," or of the authority of adjudicated cases, the only conclusion I am able to reach, after careful consideration, is that the present application must be denied.

The same question has very recently been before the supreme court of Washington, one Takuji Yamashita, a native of Japan, having applied for admission as an attorney and counselor at law in the courts of that State. The court citing and relying upon In re Saito, supra, reached the same result.

(*e*) *Burmans.*—In In re Po. 1894, 28 N. Y. Supp., 383, 384, one San C. Po, an alien native of British Burma, applied for naturalization. In deciding that such a person was not within the meaning of the naturalization law, the court said:

> Burmese are Malays and under modern ethnological subdivisions are Mongolians, and are not, therefore, within the strict letter of the act of 1882, which prohibited the admission of Chinese to citizenship, for one can be a Mongolian and yet not be a Chinaman; but the petitioner falls squarely within the provision of section 2169 of the United States Revised Statutes which limits naturalization to free white persons and to persons of African nativity and of African descent, for he is certainly neither. It is hardly worth while to cite authorities.

(*f*) *Hawaiians.*—In the one case that seems to have arisen on the point whether or not a native of the Sandwich Islands might become

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a naturalized citizen of the United States the court held that he could not. The general line of reasoning adopted by the court was that of the earlier case of Ah Yup, supra, the court having that case before it. In the decision considerable weight was given to the fact that the applicant did not appear sufficiently to understand the principles of the Government of the United States to justify his naturalization.

(*g*) *Alien enemies.*—The act of 1798 provided that—

> No alien who shall be a native, citizen, denizen, or subject of any nation or state with whom the United States shall be at war at the time of his application shall be then admitted to become a citizen of the United States.

This was repealed by the act of 1802, but the latter law contained a similar provision. This law was enforced when the war of 1812 was declared, and two decisions were rendered under it.

The first, Ex parte Overington, 1812, 5 Binney, 571, was decided on December 28. It appeared that the father of the petitioner, a subject of Great Britain, had reached the United States on October 10, 1807; he had reported himself and the petitioner, then and still a minor, in conformity with the second section of the act of Congress of the 14th of April, 1802. He then resided in the State of Pennsylvania and so continued until the 1st of October, 1809, when he died. The son, conceiving himself to be entitled to naturalization under the provisions of the act of March, 1804, which declared that—

> When any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued all directions prescribed in the second section of the said act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law,

applied now for a naturalization. The court held, Yates, J., dissenting, that inasmuch as the father himself could not if living be naturalized, it was not possible for the son to be given rights of citizenship, the court relying on the fact that under the conditions he was an alien enemy.

The effects of this decision were, however, overcome by the act passed July, 1813, by which it was enacted that—

> Persons resident within the United States or the Territories thereof on the 18th day of June in the year 1812, who had before that day made a declaration according to law of their intentions to become citizens of the United States, * * * or were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times and in the manner prescribed by the laws heretofore passed on that subject.

In October, 1813, the case of Ex parte Newman, 1813, 2 Gall., 11, a second question arose, whether an alien, a subject of Great Britain, could file his declaration preparatory to naturalization, the act of July, 1813, being relied upon. The court said:

> That act enables persons, who before the war had made the preparatory declaration, to become citizens in the same manner as if war had not intervened, but it confers no privileges on other persons. The petitioner, therefore, can not exempt himself from the general disability.

These questions obviously could not have arisen since that time until our recent conflict with Spain, and during that period they do not seem to have come up.

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(*h*) *Married women.*—The question as to whether or not the wife of an alien should be naturalized, her husband himself not being a citizen, seems not to have been directly before the court. The reports do contain instances of the naturalization of married women, one of the earliest being that of Ex parte Marianne Pic, 1806, 1 Cranch C. C., 372, but the decision covers but one line, and it does not appear whether or not the husband lived in America or was himself a citizen or contemplating naturalization. The second case is that of Priest *v.* Cummings, 1837, 16 Wend., 617, in which it appeared that the plaintiff, a British subject, married a natural-born citizen of the United States, with whom she lived from 1802, the date of the marriage, until 1832, the date of his death. The plaintiff took out papers of naturalization on October 16, 1829. The court held that such naturalization was effective and said:

> It will not be denied that Congress possess the power to naturalize femes covert, even against the consent of their husbands; and the language used by that body could not well be made more comprehensive—"*any* alien, being a free white person, may be admitted to become a citizen of the United States," etc. * * * The practice, I believe, has been universal to admit femes covert to citizenship upon application.

It does not appear in the case, however, that the husband in this case was unwilling. The same case was up on appeal in 20 Wend., 238, 1838, in which the holding of the lower court on the question of citizenship was affirmed.

In Brown *v.* Shilling, 1856, 9 Md., 74, the court declared that there was nothing in the naturalization acts that should be construed to exclude females from the right of citizenship by naturalization. In the particular case the woman in question had been naturalized during her widowhood.

In 1887 the question was referred to by Fields, circuit justice, in passing upon the question whether or not a declaration of intention to become a citizen might be taken at a private residence, such having been the course pursued with reference to Emilie Sharlotte Langtry, a subject of the Queen of Great Britain. In declaring that such a declaration was inoperative, the court made a statement as follows:

> NOTE BY THE COURT.—It is stated in the public journals that Mrs. Langtry is not a feme sole, and that her husband is living in England, and a subject of the Queen. If this be so, the question will arise on her application for final naturalization papers, whether she can be naturalized in this country. No person can be a citizen of two countries; and the wife is by law a citizen of her husband's country. (In re Langtry, 1887, 31 Fed., 879, 880.)

B. RESIDENCE.

(*a*) *Persons who are of age.*—The preliminary question in a discussion of this topic is what shall be considered to be the *residence* of one applying for naturalization. The matter has received considerable attention in two New York cases—In re Hawley, 1866, 1 Daly, 531, and In re Scott, 1848, id., 534. (See infra for a discussion of the latter.)

In the case of Hawley the applicant came to this country when 13 years old, resided here until he was 23, when he declared his intention to become a citizen. He then went to Ireland in consequence of the illness of his father, expressing, however, to his friends and acquaintances his intention to return and live in this country. He

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remained in Ireland seven years, when he returned to the United States, in 1864, lived a little more than a year in the State of New York, and applied for naturalization. It appeared in the evidence that Hawley was an unmarried man and a mechanic working at his trade wherever he found employment; that while absent in Ireland he worked at his trade. In delivering its opinion the court said:

> This last circumstance [the working at his trade], coupled with his long absence, is decisive upon the question of residence. There are few questions that come up for the consideration of judicial tribunals which it is more difficult to define than what will constitute a residence. The best definition that I have ever been able to find, or which my own experience could suggest—and I have had a great deal—is that to be deduced from the Roman law—that a man's residence is the place where his family dwells or which he makes the chief seat of his affairs and interests. (Dig. 50, Tit. I, 16, 20, 27, 203; Code, tit. 39, 7.) Hawley was a native of Ireland. His parents lived there, and while he was there following his calling of a mechanic it was, in the words of this comprehensive definition, the chief seat of his affairs and interests. He lost his residence here and was, up to the time of his return, a resident of Ireland.

The court refused to grant papers of naturalization.

In In re An Alien, about 1842, Fed. Cas., 201a, Betts, district judge, in passing upon the residence of one who had been a sailor, said:

> Residence, in its legal acceptation, is the place of the party's home or domicile, and not merely the spot occupied by him for the time being. This may be constantly varying, but every change of abode is not regarded as constituting a new residence without the accompaniment of an intention to abandon the former with the purpose of taking up another.

It is not within the purview of this report to enter upon the discussion of domicile, but the above statements, taken with those that follow in the discussion of the residence of sailors, will sufficiently indicate the general attitude of the courts on this matter. Elaborate discussions of the question of domicile will be found in White *v.* Brown, 1848, 1 Wall., jr., 217; Guier *v.* O'Daniel, 1806, 1 Binney, 349 note, and Desesbats *v.* Berquier, 1808, id., 346; Abbington *v.* North Bridgewater, 1839, 23 Pick., 170.

From the earliest statutes there has been some more or less definitely expressed provision for the continuance of residence within the jurisdiction of the United States during a certain period. The act of 1790 provided for the naturalization of one "who shall have resided within the limits and the jurisdiction of the United States for the term of two years." The act of 1795 required that the court admitting such an alien should be "satisfied that he has resided within the limits and under the jurisdiction of the United States five years." By the act of 1798 the applicant must satisfy the court that he had "resided within the United States fourteen years." The same language was used in the act of 1802, except that the period of residence was changed. In the act of 1804 the language was changed to read "has continued to reside."

By section 12 of the act approved March 3, 1813, which act provided for "the regulation of seamen on board the public and private vessels of the United States," it was declared that—

> no person who shall arrive in the United States from and after the time when this act shall take effect shall be admitted to become a citizen of the United States who shall not for the continued term of five years next preceding his admission as aforesaid have resided within the United States, without being at any time during the said five years out of the territory of the United States.

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A later act, however, approved June 26, 1848, repealed the words "without being at any time during the said five years out of the territory of the United States."

Several cases arose prior to the act of 1813 in which the question of continuity of residence was in issue. In Ex parte Walton, 1804, 1 Cranch C. C., 186, the affidavit with reference to residence declared that the applicant "has resided within the United States upward of six years; that during that period he was absent a short time upon business, but left his family in the United States." The court rejected this application "because the residence did not appear to be a continued residence and the term of absence was indefinite."[a]

In Ex parte Sanderson, 1804, 1 Cranch C., 219, it appeared from the affidavit of one Hodgson that the applicant came to America in October, 1797, and continued to reside here until 1800, when he went to England, returning in April, 1801. In the fall of 1801 he went to England again and returned in 1802. He seems thus to have been out of the country about a total of two years out of seven. The court refused to admit him because he had not continued to reside according to the act of 1804.[b]

In Ex parte Pasqualt it was alleged in the affidavit that the applicant had resided upward of five years in Alexandria, and that during that time he sailed from the port of Alexandria in an American vessel as a mariner. No question was made as to the continuity of the residence.

Only one case has been found in which the stringent rule expressed in the statute of 1813 was brought into operation. In that case, Ex parte Paul, 1844, 7 Hill, 56, it appeared that Alexander Paul, an alien born in Ireland, applied for naturalization as a citizen. He had come to the United States in July of 1836, and he had since that time resided here. The only question as to his naturalization arose out of the following facts:

> In September, 1843, the applicant left the city of Rochester to go to Ogdensburgh, St. Lawrence County, by way of the lake. The steamboat in which he traveled stopped about ten minutes at Kingston, Upper Canada, to take in passengers, during which time the applicant stepped upon the wharf or dock, where he remained some two or three minutes, and then returned to the boat and proceeded to Ogdensburg.

The court, referring to the strict language of the statute of 1812, said:

> The leading object of the provision was undoubtedly to make the alien's right depend upon the simple enquiry whether he has in fact *remained* within the United States during the whole five years next preceding his application, and thus exclude all enquiry as to the intention and purpose of his departure. In the present case the applicant has not complied with the condition upon which his right to become a citizen depends, and his application must, therefore, be rejected.

In the case of In re Hawley, 1866, 1 Daly, 531, the court refers to a case (which seems never to have been reported, unless, indeed, the

[a] It should be noted of this case, however, that "the court had also seen another affidavit, by the same deponent, stating that Walton last returned to the United States on the 20th day of May, 1804, which was inconsistent with the present affidavit."

[b] The decision might have gone off on another point, for it appeared that he had not made a previous declaration of his intent according to the act of 1802.

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court has in mind and is confused over Ex parte Paul), the facts of which he stated as follows:

> It was decided in this court that a person visiting the falls of Niagara, who had crossed to the Canadian side to look at the falls from that point of view, had been out of the territory of the United States, and could not be naturalized until the expiration of five years thereafter.

The repeal of the act of 1813 by the act of 1848 revived the previous provisions of the statute of 1804 which required that an applicant had "continued to reside." Two cases have passed upon the meaning of this provision.

The first, In re Clark, 1854, 18 Barb., 444, was one in which the petitioner, with a great many others, applied for naturalization as a citizen of the United States. In common with the rest he had furnished no "proof of continuous residence within the United States." Commenting upon the repeal by the act of 1848 of the strict clause in the act of March 3, 1813, indicated above, the court said:

> The object of the amendment of 1848 was to allow seamen who were actually engaged on any of the public or private vessels of the United States, and thus in their business were necessarily beyond the limits of our territory, to avail themselves of the naturalization laws; but the person drawing the repealing clause made it general, instead of an exception in their favor. Whether Congress should not restore this provision, making an exception in favor of the seaman and soldier, it is not for me now to say, as I am inquiring only what the law is, that it may be administered correctly by this court.

The court did not define what it understood by the phrase "continuous residence," contenting itself by stating that proof of such residence was necessary.

In In re Hawley, supra, the facts of which are stated above, the absence was considered sufficiently to fall within the operation of the statute. The court said:

> If it had been merely a visit to see his parents, and he had returned to this country within what would be deemed a reasonable time, under the circumstances, I should, in view of the intention he expressed when leaving, have regarded it as a continuing residence which had never been abandoned. But he was absent for seven years, and it appears that during a portion of that time he worked as a mechanic in Ireland, as he had done in this country. This last circumstance, coupled with his long absence, is decisive upon the question of residence.

The court then expressed the views already quoted above.

The net result of the cases seems to be that the courts require that a man's domicile shall never be changed, but that he himself may actually go without the limits of the United States, providing he does not remain an unreasonable time. And see the cases below as to the absence of minors from their homes.

But a word may be said in passing on the question of the term of absence. In Ex parte Walton, supra, the court objected to admitting the applicant to citizenship, the applicant having been absent from the country, on the ground, among others, that the term of absence was indefinite. It is not clear from the case, nor from the later ones, whether or not the term of absence should be set out. In Ex parte Pasqualt, supra, nothing was said as to the length of time the applicant had been absent from the United States, the affidavit stating that he had during the time sailed from the port of Alexandria. In Ex parte Sanderson, supra, an absence of two years was held fatal, while the limit seems to have been reached in the case of Ex parte Paul,

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supra, where less than ten minutes operated to break the continuity of the residence. For a case somewhat unique as to facts, and containing a good discussion, see In re Wrigley, 1831, 8 Wend., 134.

In construing the term of residence two points must be kept in mind: First, the length of time that an applicant must reside within the jurisdiction of the United States before he may make his preliminary declaration, and secondly, the length of time before a court will consider an application for his admission.

First. Residence before making the declaratory oath. The act of 1790 contained no provision for the declaratory oath. The act of 1795 provided for a preliminary declaration, but computed it backward from the time of naturalization, the provision being that it must be "three years at least before his admission." The statute of 1798, which required a total residence for naturalization of fourteen years, provided that the applicant "shall have declared his intention to become a citizen of the United States five years, at least, before his admission" (with certain exceptions specified). The act of 1802 required a preliminary declaration by the applicant "three years at least before his admission." The act of 1824 changed the time to "two years before his admission," and this provision became incorporated in the Revised Statutes of 1878, section 2165. First, where the language is "two years at least prior to his admission," and this is the period which was adopted in the act passed in 1906. But few cases involving this precise point have been found, and they are discussed in connection with the requirement of residence for minors. Second. Residence before taking out final papers. For this the statutes have always provided. The act of 1790 provided for a term of two years, one year at least to be within the State in which he applied for naturalization. In the act of 1795 this was increased to five years. The act of 1798 extended the period to fourteen years, with certain exceptions specified. The act of 1802, repealing all former acts, reduced the period again to five years, and this provision was repeated in the act of 1813, and continued on down as the period, being incorporated in the Revised Statutes, section 2165-third, and section 2170. Section 2170 of the Revised Statutes expressed the requirement somewhat differently from the statement of 2165. Third. In section 2170 it was stated—

> No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

As will be noted, the difference here consists in the fact that the term of residence is said to be continuous rather than the residence itself. The present requirement is found in section 4, which requires that the applicant—

> has resided continuously within the United States for five years at least and within the State or Territory in which such court is at the time held one year at least.

A few cases are sufficient to show that the courts have followed the express statutory terms as to residence. In Doe ex. dem. O'Brien *v.* Woody, 1846, 4 McLean, 75, the question was raised as to whether or not under the statute of 1816 it was necessary to show five years' residence on the part of one who had resided in the United States before 1802. It was decided that that was necessary. But in the later cases

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of People *v.* Sweetman, 1857, 3 Parks. Crim., 358 et 376; In re Clark, 1854, 18 Barb., 444; and In re Hawley, 1866, 1 Daly, 531, it was adjudged that there must be a residence of five years in order to entitle the applicant to naturalization.

A different provision has been made in the cases of soldiers, sailors, and marines. A statute of 1862 provided that—

any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen.

This was incorporated in the Revised Statutes of 1878, section 2166, and seems never to have been expressly repealed. It has been held that this statute did not include men enlisted in "the Marine Corps of the United States." In re Bailey, 1872, 2 Sawy., 200; Berry *v.* Hall, 1892, 6 New Mex., 643, and see People *v.* Riley, 1860, 15 Calif., 48.

In 1872 an act was passed providing that—

every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

And this was incorporated as section 2174 of the Revised Statutes of 1878.

Prior to the statute of 1872 the question of residence of sailors had been raised in a number of cases. The earliest noted is that of Ex parte Pasqualt, already cited, in which no question was made of the point that the applicant was a sailor. In the case of In re An Alien, about 1842, Fed. Cas., 201a, it appeared on the hearing for naturalization that the applicant had—

for several years past * * * been a sailor, being constantly engaged in that employment except at short intervals between ending one voyage and going out upon another. These periods [were] passed at the house of his mother, he having no family of his own.

The court held that such was continuous residence within the meaning of the statute of 1802. The strict provision of the statute of 1813 was held to have no application to the petitioner, since when he came to the United States in the year 1832 he was a minor, and by the statute of 1824 it was provided that persons in his position might be naturalized if they had "continued to reside" in the jurisdiction of the United States. The court construed the statute of 1824 as repealing the statute of 1813 so far as minors were concerned, which thus left the statute of 1802 in force.

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In the case Anonymous, 1846, Fed. Cas., 465, s. c. 4 N. Y. Leg. Obs., 98, it appeared that the applicant had deserted a British ship of war and enlisted on board an American frigate in 1814, war then existing between the two nations. He continued to serve in the United States Navy throughout the war and for several years subsequently. After leaving the Navy he had followed the seas constantly, sometimes in the merchant and at other times in United States service. In 1832 he filed his declaration of intention to become naturalized. He had acquired no residence in any port of the United States. The court held that these facts did not show such residence as the act of Congress required, on the ground that the residence must have its commencement within the territory of the country, and that had he such it might have regarded his service in the Navy and on board the merchant vessels as a continuous residence within the meaning of the statutes. It is not clear, however, how such could have been the effect under the plain language of the statute of 1813.

In In re Scott, 1848, 1 Daly, 534, the court was called upon to construe, in the matter of residence, the meaning of the statutes relating to naturalization after the repealing act of June 26, 1848. The applicant, Scott, came to this country from England with his parents when he was 3 years of age and resided with them in the city of New York until their death, when he shipped, at the age of 17, as a seaman from the port of New York on board an American vessel, and for seven years thereafter and up to the time that he applied for naturalization he was continuously and exclusively employed as a mariner in the merchant service of the United States. The question presented in the case was whether he had retained during those seven years the residence which he acquired in the city of New York. The court held that he could not be deemed to have abandoned his domicil while engaged in his vocation as a mariner upon the ocean, this view being enforced in the mind of the judge by the fact that Scott had sailed exclusively in American vessels, on the theory that—

> the vessels of a nation, whether public or private, partake of the attributes and, in a certain sense, are to be regarded as a part of the territory of the nation. While they are upon the high seas, and not within the limits of the territory of any foreign nation, they are under and subject to the jurisdiction of the country to which they belong [citing authorities], and this being the case, a seaman who has acquired a residence in the United States must be regarded as retaining that residence as long as he continues to serve in the public or private vessels of the country. While away from the place where his residence was fixed, the ship, whether it is upon the ocean or in a foreign port, is his place of habitation. Its national character is denoted by its flag, and it must in such a case, for the purpose of residence, be regarded as a part of the territory of the nation. It is always difficult to lay down any general rule upon the subject of residence, but I think it may be said in reference to a seaman that if he is married, his residence is the place where his family dwells, and if he has never been married, that it is the place where his domicil was fixed when he first went to sea as a mariner.

The court concluded that Scott had resided in the United States during the last preceding five years. (See also In the matter of Bye, 1869, 2 Daly, 525.)

So far as noted in the cases heretofore given, the seaman's service has been on board American vessels. A slightly different question, therefore, is presented in the case of In re Shaw, 1892, 2 Pa. Dist. Ct., 250. There the depositions taken on a rule to vacate and annul a decree of naturalization and rescind a certificate issued thereon

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showed that the defendant was a mariner and engineer on board steamers; that in the year 1879 he was employed in England as an assistant engineer on board a steamer of Belgic registry, which was owned and operated by a Pennsylvania corporation. The steamer ran between Antwerp, Philadelphia, and New York, making alternate trips for the period of two years until 1881. The defendant testified that the steamer was at Philadelphia in 1882, but he did not remember how many trips had been made while he was employed on board. The steamer had not been in the port of Philadelphia, nor had he, since 1882. He was employed, however, on a steamer plying between New York and Antwerp until 1883, when he was transferred to another steamer, which never ran to Philadelphia during the time he was employed on her. He remained on board this steamer for about five years, or until 1889, when he was transferred to a fourth vessel, which ran between Antwerp and New York and never ran to Philadelphia. He was at the time of the trial still employed on this ship. In his application for citizenship he gave as an address a place of appointment used by him at divers times when he came to the city. In 1882 he declared his bona fide intention to become a citizen of the United States, and, in 1886, took out papers of naturalization. Between the dates of his first and final papers the petitioner continued occasionally to come to Jersey City, N. J., had invested money in a building association, and was married in Brussels to a sister of an American whom he had met in Brooklyn, N. Y.; that after his marriage he lived for a time with his wife in the State of New York, but since then his wife and children have resided in Antwerp, and when in that port he resided with them. The court said:

The question to be determined is whether Shaw had such a residence within the United States for five years previous to his naturalization and for one year within the State of Pennsylvania as entitled him to become a citizen.

The court held that there could be no doubt, in the absence of clear evidence to the contrary, that Shaw had renounced his allegiance to Great Britain, and that therefore he had no domicile or even residence in that country. That although on board a Belgian steamer, the latter was in the service of an American charterer; that he followed the sea, lived aboard the ship, and made himself temporarily more or less at home in the ports at which he arrived. Moreover, it could not be seriously contended that his residence was in Belgium for any purposes affecting the acquisition of citizenship, unless the purely negative one of depriving him of a residence elsewhere. It appeared that his family had resided in Antwerp—

for economy, for the health of his wife and children, and for the convenience of meeting him when his ship came into that port, and that his intention is to move them to the United States.

The court continued:

Now, if this residence in Antwerp is of such a character as to prevent his becoming a citizen of any land other than Belgium, and being unaccompanied with the intention of becoming a Belgian, it has no virtue in preparing the way for Belgian citizenship; then, inasmuch as his former status as a subject of the Queen of England has been renounced by him, we have before us a man without a country. It is true that where the intent to retain a former citizenship while dishonestly assuming a new one is made to appear, a revocation of the letters of naturalization would leave the pristine allegiance undisturbed; yet where, as in this case, there is an express abandonment of the old ties, and nothing in the applicant's conduct or language inconsistent with this renunciation, why should

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the law be stretched to convict him and his voucher of fraud because a mariner's precise residence is, apart from his own explanation, a difficult matter to fix. That explanation should be accepted in good faith, and only clear and satisfactory evidence should be admitted to rebut it. The definitions which define domicile or residence, while as important as they are subtle, need not be invoked here. A man's domicile is his home, and he can have but one; and among many residences which he happens to enjoy, his domicile may, in a particular case, not be found, for he may never have given up a domicile once acquired, and yet may not have resided in the place of that domicile for an indefinite time past. For the purposes of naturalization it has never been held that an exclusive residence in the United States is necessary when the exigency of a man's vocation requires him to reside in several places intermittingly. This is one of the cases where a man may make evidence for himself as to establish that he wishes to become a citizen, and that of the different places where he may from time to time abide, the United States, and therein the State of Pennsylvania, is the designated residence of his choice, a choice so declared being, in the absence of inconsistent actions or statements, sufficiently proved by his mere declaration. It is therefore a question of intention, of bona fides, and in favor of the solemn protestation of such intention every presumption should be raised. Rule discharged.

It will be noted here that the court makes the residence of the statute practically equivalent to domicile.

The point has been raised as to whether or not service in the Navy was within the meaning of section 2174 of the Revised Statutes, which provided for the naturalization of seamen. In In re Gormly, 1880, 14 Phila., 211, the petitioner had enlisted in the Navy of the United States in 1874, and was honorably discharged from the service in 1878. He petitioned that he be permitted to become a citizen, apparently basing his application on the above-named section of the Revised Statutes. The court held that this act did not extend to the naval service. See also in matter of Stewart, 1868, 7 Robt., 635; In re Bailey, 1872, 2 Sawy., 200.

In 1894 an act was passed which provided that any alien—

of the age of 21 years and upward, who has enlisted or may enlist in the United States Navy or Marine Corps, and has served, or may hereafter serve, five consecutive years in the United States Navy, or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition without any declaration of his intention to become such.

Third. How residence is proved. The statute of 1790 made no provision for the proving of residence, although providing that the applicant should prove "to the satisfaction of such court that he is a person of good character." The act of 1795 provided that an alien might be admitted to become a citizen "on his declaring on oath or affirmation, in some one of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the same." By the act of 1798 the applicant must in his application "declare and prove to the satisfaction of the court having jurisdiction in the case that he has resided within the United States fourteen years at least." The act of 1802 specified that "the court admitting such alien shall be satisfied that he has resided within the United States five years at least," but provided, further, "that the oath of the applicant shall in no case be allowed to prove his residence." By the act of 1816, in section 2, which provided for the naturalization of certain persons without the necessity of a preliminary declaration, it was specified that the applicant should prove—

to the satisfaction of the court that he was residing within the limits and under the jurisdiction of the United States before the 14th day of April, 1802, and has

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continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States * * * shall be proved by the oath of affirmation of citizens of the United States, which citizens shall be named in the record as witnesses.

The act of 1824 repealed the provisions quoted of the act of 1816, and required that the applicant prove to the satisfaction of the court his residence, with the further requirement that—

the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years * * * shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses.

The act of 1862, with reference to soldiers honorably enlisted and discharged, merely required in terms that the applicant "prove more than one year's residence." The act of 1872, relating to seamen, made no special provision for the proof of his service (which was made equivalent to residence) other than "the production of a certificate of discharge and good conduct during that time." The general provisions, therefore, of the act of 1824 remained in force until 1878, and were incorporated in the Revised Statutes of 1878, which provided, section 2165: Third, that "the oath of the applicant shall in no case be allowed to prove his residence."

Sixth [with reference to aliens residing within the limits and under the jurisdiction of the United States between the 18th day of June, 1798, and the 18th day of June, 1812]. It must be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States * * * and the residence of the applicant * * * must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses.

Section 2166 practically reenacted the provisions of the act of July 17, 1862, with reference to seamen.

In 1894 the act which provided for the naturalizing of men enlisted in the United States Navy or Marine Corps required that the court "be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps." By the terms of the recent act of 1906 the petition is verified by the—

affidavits of at least two creditable witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously.

The sufficiency of proof offered has been before the courts in a number of cases. One of the earliest was that of Ex parte Tucker, 1802, 1 Cranch C. C., 89, in which the applicant offered a deposition of two parties, taken before a notary public, "stating that they have known him 'since the year 1793, in New York, and that he was a supercargo in their employ in the year 1795, and continued until 1798.'" The court declared that this deposition was insufficient within the provisions of the statute of 1795.

In the case of Ex parte Walton, 1804, 1 Cranch C, C.. 186, a residence was sought to be established by an affidavit. No question seems to have been raised but that this was a proper method of establishing the residence, though the court objected to the matter stated in it.

In Ex parte Sanderson, 1804, 1 Cranch C. C., 219, the court again recognized an affidavit of a third party as proper proof of residence,

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though in this case objecting also to the statements made in the paper.

In Ex parte Pasqualt, 1805, 1 Cranch C. C., 243, an affidavit as to residence was accepted without question.

The question arose in State *v.* Helle, 1833, 2 Hill (S. C.), 290, as to what force, if any, was to be given under the statute of 1802, which provided that in no case should the oath of the applicant be accepted to prove his residence to an affidavit made by the applicant himself with reference to his residence. The defendant had been indicted for perjury. It was held by the court that such oath being expressly excluded by the statute of 1802, was—

merely voluntary and impertinent, as if a party filing a declaration in a court of common pleas should think proper to make oath of its truth. [The prisoner was therefore discharged.]

And this view of the oath of the applicant as to his residence has been confirmed in the more recent case of United States *v.* Grottkau, 1887, 30 Fed., 672, the court there saying, after citing State *v.* Hecle:

This is a case precisely in point upon the very question here in judgment, and I must say, as the court said in the case of State *v.* Helle, that I can not suppose, in the face of this clause, in the third section of the naturalization statute, that the oath of the defendant in relation to his residence was received by the court, or had any effect in support of his application to be admitted to citizenship. The court was not allowed, but was forbidden by the statute, to receive it. And I must presume that the court was controlled in its disposition of the application by the provisions of this statute, and therefore that this was an extrajudicial oath, one which was not required or authorized by the law relating to the naturalization of aliens.

A different ruling was made as to the manner of proof in In re An Alien, 1845, 7 Hill, 137, the applicant having sought to establish the fact of residence by means of the usual affidavits. The court examined the matter with great care, and in the course of his opinion, after calling attention to the language of the statute of 1802, and particularly to the proviso "that the oath of the applicant should in no case be allowed to prove his residence," continued as follows:

This act does not in terms declare in what manner the court shall become satisfied of the residence of the applicant and of his good moral character and correct principles, but it leaves no room for doubt on the subject. As between parties litigant their admissions and agreement may satisfy a court of the existence or nonexistence of material facts; but in applications for naturalization there are no hostile parties who can adjust or establish anything by way of stipulation. The court can not take the mere statement of any person unsupported by an oath. Such a course would be unprecedented in a court of justice; and, beyond all question, upon the terms of this act alone the court would be bound to require legal evidence to establish all the facts upon which the judgment is finally to be rendered.

The proviso declares that the *oath* of the applicant shall not be allowed to *prove* his *residence*. From this it is to be inferred that the residence is to be *proved*, and to be proved by the *oath* of some one other than the applicant himself. * * *

Undoubtedly the legislature may make ex parte affidavits competent evidence in any case, as they have done in various instances, by express enactment. But this only proves that, without such enactments, affidavits are inadmissible and can never be received. I have no difficulty in holding that affidavits can not be received or read as evidence in any case upon which a court is to render a final judgment unless the legislature have declared in very unequivocal terms that such shall be their effect. If the present question, therefore, depended exclusively upon the act of 1802 affidavits ought not to be received as evidence.

But in 1816 "An act relative to evidence in cases of naturalization" was passed which provides that the fact of residence is to "be proved by the oath

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or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses;" and when so "satisfactorily proved," the place or places where the applicant has resided must be stated in the record, with the names of the witnesses. (Act of 22 March, 1816, § 2, 6 Laws U. S., 23.) To the like effect is the act of May 24, 1828 (8 Laws U. S., 132).

These acts, in most respects, are declaratory of the previous law, as the residence must before have been proved by the oath of witnesses or a witness; or, in other words, must be proved by legal testimony. But by these acts there must be *witnesses;* one alone is not enough; and they must be *citizens;* not aliens, as they might have been under the act of 1802.

I entertain no doubt, therefore, that affidavits can not be legally received in these cases, and that no court should ever read them, or hear them read, as evidence to prove the right of citizenship. Certain things are to be done in open court. (Act of April 14, 1802, § 1, sub. 2, 4); and of these the court has judicial notice. But in respect to other matters, as residence, good morals, and sound principles, they must be proved. I have supposed the oath of the applicant allowable as evidence for some of these purposes, but that ex parte affidavits can not be received for any purpose.

The same view was maintained in People *v.* Sweetman, 1857, 3 Park. Cr., 358, in which the defendant was indicted for perjury and for swearing falsely to an affidavit as to the residence of a certain applicant for naturalization. Pratt, J., declared:

The laws of Congress require the application to be made to the court; and the proof of five years' previous residence must be taken in open court. It must also be common-law evidence, taken by the oral examination of the witness Previously prepared affidavits are not competent. * * * In this case there was no proof that any application was made to the court at all, or that the witness was ever sworn in open court, or that the court in any manner passed upon the matter.

The court, therefore, reversed the judgment of conviction rendered below. And see also the remarks of the court in In re Clark, 1854, 18 Barb., 444.

From In re McCoppin, 1869, 5 Sawy., 630, it appears that an inaccurate recital in an application for citizenship as to the man's term of residence within the United States is not a ground for annulling the certificate and the granting of renaturalization papers when the applicant was entitled to naturalization aside from the question of residence. Although the statute of 1816 provided that proof of the applicant's residence should be given by citizens, as late as 1868 the question was determination. In Commonwealth *v.* Paper, 1868, 1 Brewster, 263, in which it appeared that two aliens in being naturalized had each vouched for the other, the court, after saying "consequently one of them must have been an alien when he was received as voucher," declared the obvious ruling that the voucher of an alien could not be received as to matter of residence.

The courts have also been called upon to decide whether or not a person—

who has presented himself in this capacity [that of a "voucher" as to residence] * * * [and] has within the last six months borne the same relation to nine cases in this court and seven in the district court for this district,

could be permitted to prove the residence of the applicant. The voucher admitted that he had been in the habit of making a charge for appearing and giving his testimony, and that in the case at bar he either had been or was to be compensated. The court said:

But it is obvious, I think, that a very vicious practice would seem to be sanctioned if the court should in such cases accept without scrutiny the testimony of any man who habitually and for compensation appears as a voucher.

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The application for naturalization was denied. In In re Lipshitz, 1899, 97 Fed., 584.

In Commonwealth *v.* Paper, supra, the court also decided that there was nothing in the acts of Congress requiring the residence of applicants for naturalization to be set forth excepting only the residence in the United States and State.

In Cummings's Petition, 1860, 41 N. H., 270, the point arose as to whether or not the year's residence in the State must be the last preceding the application for admission. The court declared:

> We are, therefore, of opinion that in an application for naturalization under the act of April 14, 1802, it is not necessary for the applicant to allege or prove his residence for the year immediately preceding his application in the State or Territory where the court is holden; but it is sufficient for him to allege and prove such residence for any one of the five years of his residence in the United States.

The present statute (1906) leaves this point an open question, inasmuch as it provides merely that the alien must have resided continuously within the United States for at least five years immediately preceding the date of his application, "and within the State or Territory where such court is at the time held one year at least."

(*b*) *Minors.*—By the act of 1802, section 1, an alien might be naturalized after a residence of three years, and by section 2 it was provided that certain registration should be made of aliens coming into the country for those both beyond the age of 21 years and those within that age; and it was further provided that the term of residence should commence from the date of this registration. Congress thus recognized the right of an alien minor to take some preliminary steps toward naturalization.

The act of 1824 provided that—

> any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States.

and these provisions were substantially incorporated in the Revised Statutes, 1878, section 2167, which provided for the naturalization of one—

> being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States.

In a number of cases the courts have been called upon to construe different portions of these statutes. In In re Merry, 1880, 14 Phila., 212, an alien minor sought to be naturalized. The court held, and rightly, that under the wording of the statute of 1824 it was not possible for an alien while yet a minor to become a naturalized citizen of the United States. The court noted, however, that under the act of 1802 as it originally stood it would have been possible for one who, while alien and minor, to become a citizen of the United States, he having resided in the United States for five years, and this upon the petition of his guardian or, perhaps, next friend.

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In Schutz's Petition, 1886, 64 N. H., 241, the question arose under the statute of 1824 as to whether or not it was necessary that the alien should reside in this country for two years after attaining majority before he could be naturalized. It was decided that such was not necessary, the court saying that—

> the condition of a five years' previous residence, including three years of minority, is met if the whole five years is during minority and immediately precedes the arrival at majority. If there has not been five years of continuous residence on reaching the age of twenty-one, the application can not be entertained until that period shall have elapsed.

An interesting question has also arisen as to the effect on an alien's application to be naturalized, of his absence from this country on business or otherwise. In In re An Alien, 1842 (about), Fed. Cas., 201a, the minor had followed the sea during a part of his minority, and it was objected that this could not constitute and prove his residence for the purpose of naturalization, but the court declared, after using the language quoted above, that the applicant was entitled to be naturalized. In speaking of the term "residence" as used in the statute, the court said:

> It is to be a residence of a continuous character; but absence from a domicile in the regular prosecution of a man's vocation or business does not divest his residence, and is entirely compatible with the demand of this section, because a residence, when obtained, in judgment of law continues to the party until a new one is acquired by him.

In the case of In re Hawley, 1866, 1 Daly, 531, already cited at length above, shows, however, conditions under which a man's residence may be lost, the facts proving there that not only had the minor left the country, but had resided in a foreign country for some seven years, and had prosecuted while there his vocation of mechanic.

In In re Rice, 1877, 7 Daly, 22, it appeared that the applicant, born in Germany in 1850, came to New York when he was 6 years old, in company with his parents, with whom he resided until he was 16. Under their direction he then returned to Germany for the purpose of completing his education, remaining there three years, when he again returned to his parents in this country, with whom he had since resided. It was objected that this absence had broken in upon his term of residence, and that therefore he could not be naturalized. The court, after quoting the provision in the local election law that "no person shall be deemed to have lost or acquired a residence by being a student in a college, academy, or seminary of learning," pronounced his decision as follows:

> I am of opinion that the applicant "has resided five years within the United States, including the three years of his minority," and that his application should be granted, notwithstanding such temporary absence.

C. QUALIFICATIONS.

The statutes have from the very earliest provided for certain qualifications in those who apply for naturalization. By the act of 1790 the applicant must show that he was a person of good character. To this requirement the act of 1795 added "that he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order

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and happiness of the same." By the act of 1802, section 1, it was required to appear to the court's satisfaction that the applicant had—

behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

And this was essentially the wording of the Revised Statutes of 1878. The present statute requires that the applicant shall speak the English language, unless physically unable to do so, or unless the applicant has made an entry on the public lands under the homestead acts, and in addition must be possessed of a good moral character and attached to the principles of the Constitution of the United States and to the good order and happiness of the same.

A question was raised In re Kanaka Nian, 1881, 6 Utah, 259, as to whether or not one who was not able to read or write the English language should be admitted as a citizen of the United States, but the opinion went off on the ground that the applicant was a Mongolian, and therefore the question now raised was not material to the decision. The court expressed the opinion, however, that one who could not read or write the English language was not fitted to exercise the privileges and assume the duties of an American citizen. The matter was mentioned in the later case of In re Rodriguez, 1897, 81 Fed., 337, in which the question was whether a native Mexican might be naturalized. The principal question in the case, which was elaborately argued both by regular attorneys for the parties as well as others called by the court, was whether or not the Mexican's color would prevent his being naturalized under the Revised Statutes providing for free white persons and aliens of African nativity and descent. The decision was influenced not a little by the provisions of the Treaty of Guadalupe-Hidalgo, and the court finally held that the applicant might be naturalized, being within the meaning of the statute. A question, however, was raised here as in the preceding case, in a way largely obiter, as to whether or not the fact that the applicant could neither read nor write, in this case any language (in the preceding case the applicant could read the Hawaiian language and had read the Constitution in that language), should defeat the application for naturalization. The court remarked—

That the applicant is lamentably ignorant is conceded, and that he is unable to read and write the testimony clearly discloses. Naturally enough, his untrained mind is found deficient in the power to elucidate or define the principles of the Constitution. But the testimony also discloses that he is a very good man, peaceable and industrious, of good moral character, and law abiding "to a remarkable degree." And hence it may be said of him, notwithstanding his inability to undergo an examination on questions of constitutional law, that by his daily walk, during a residence of ten years in the city of San Antonio, he has practically illustrated and emphasized his attachment to the principles of the Constitution.

The court granted his second papers.

As indicated above, the statutes also require that a man shall have a good moral character and show that he is attached to the Constitution. The reasons for this requirement were suggested by Dean, J., in In re Clark, 1854, 18 Barb., 444, 447:

It was never intended by those who enacted the act for the naturalization of aliens that persons who had been transported for crime—that those who came over here merely because Europe was too full for them—but who retain their loyalty of feeling for the monarchies they had left, should, because they

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remained here for the period of five years, be entitled to admission to citizenship. The intention was to permit those who came here from abroad seeking a permanent home, who, by five years of continuous residence, manifested that intention, and by good behavior during all that time and an attachment to republican principles—a good behavior and an attachment to republican principles, which could be proved to the satisfaction of a court—had shown themselves worthy recipients of the benefits to be derived from citizenship, and safe depositories of the powers it confers, to be admitted to these rights and the exercise of these powers, by an order entered in open court after an examination into the facts of each case—and a judicial decision upon the application—an examination which should be conducted with the same care, and a decision which should be made with the same deliberation and solemnity as that which should accompany every other judicial act.

There has been but little legislation on the question as to what acts will prevent a man, under the old statute, from being classed as one of good moral character and attached to the Constitution. In In re Spencer, 1878, 5 Sawy., 195, the applicant had, some years before his application, been convicted of perjury, but for this offense he had been pardoned. The contention was that the pardon had had the effect of wiping out the offense of which he had been convicted, and that, therefore, he stood as if the offense had never been committed. The court declared that such was not the effect of a pardon; that it did not operate retrospectively. "The offender," said the court, "is purged of his guilt, and thenceforth he is an innocent man; but the past is not obliterated, nor the fact that he had committed the crime wiped out."[a] The court therefore denied the application for citizenship. The court had previously set out his understanding of the meaning of the phrases in question in this language:

Upon general principles it would seem that whatever is forbidden by the law of the land ought to be considered for the time being immoral within the purview of this statute. And it may be said with good reason that a person who violates the law thereby manifests, in a greater or less degree, that he is not well disposed to the good order and happiness of the country. Good behavior—that behavior for which a person reasonably suspected of an intention to misbehave may be required to give surety—is defined to be conduct authorized by law, and bad behavior such as the law punishes.

In the matter of Alien, 1845, 7 Hill, 137, the question as to the manner in which these qualifications of the applicant must be proved was presented, affidavits having been offered for the purpose, which affidavits had been taken out of court. The court declared that inasmuch as the act required that it should "be satisfied," and that it should "appear to their satisfaction," that he had behaved as a man of good moral character, and in view of the fact that the oath of the applicant should in no case be allowed to prove his residence, that an affidavit taken out of court was not sufficient to establish the good moral character of the applicant; that this was something that

[a] The Supreme Court of the United States, in Ex parte Garland, 1866, 4 Wall., 333, 380, commented as follows upon the effect of a pardon: "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity. There is only this limitation to its operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment."

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had to be done in open court. It would seem, however, that affidavits had been not a little used in this matter. The present statute is very explicit in setting forth these qualifications, and provides that it may be done by affidavit.

Other cases have arisen which have called for a discretion and determination as to what are sound principles within the meaning of the statutes. The first of these arose in 1871, in the case of In the matter of Douglass, 5 West. Jur., 171, in which certain parties, admittedly polygamists, applied for naturalization. The court declared that both the Roman civil law and the English common law "condemned polygamy and bigamy, which are regarded as practically the same crime," and since therefore they were criminals, they could not be admitted to citizenship in the United States. Moreover, their allegation that they considered it a question of religious belief was immaterial.

The question has arisen at least one other time in the case of Ex parte Sauer, 1891, 81 Fed., 355, note.

The applicant in this case was a subject of the Emperor of Germany, who declared himself to be "a socialist and a firm believer in the doctrines of socialism, Johann Most, the great apostle, being, as he informed me, greatly misunderstood." The report of the case continues as follows:

Thereupon I stated that, in the judgment of the court, the principles of socialism are directly at war with and antagonistical to the principles of the Constitution of the United States of America and absolutely inconsistent with his being "well disposed to the good order and happiness" of the people and Government of this country. I then asked him to state some of its leading principles. He replied that they contemplated the ownership and operation of all railroads and transportation lines of the country by the Government, and that, as land was as free as air and water, socialists demanded the forced sale of all lands owned by the citizens in excess of that which was actually necessary to make a living upon (estimated by him at 200 acres) to the Government for the purpose of giving it to those who owned none. I sought to point out to him how such ideas were un-American, impracticable, and dangerous in the extreme to society as organized throughout the civilized world, and particularly in this free country. I furthermore explained to him that private property could not, under the Constitution, be taken by the Government for private use, and that this was a fundamental principle of the Government, and one of the most sacred and jealously guarded rights of the citizens. He repelled these suggestions with derision and scorn, maintaining his right to his views. I informed him that while it was true that he or any naturalized citizen had an indisputable right to such sentiments and to their free utterance, as well as to any other views they might entertain upon government, yet when a foreigner openly confesses to have such opinions, and, declaring his intentions to promulgate and carry them out, seeks to be admitted to American citizenship, it would be contrary to his oath of naturalization and violative of the spirit and principles on which this Government is founded and depends for its welfare to admit him to citizenship.

For these reasons, and because I am of opinion that the time is upon us when the safety and perpetuity of our free institutions and of constitutional government in the land, as well as the good order and happiness of the people, demand that those who apply for the privilege, honor, and distinction of becoming American citizens should be free from doctrines which are not only subversive of constitutional government and our free institutions, but of organized society itself, have I deemed it wise and meet to deny the application of Richard V. Sauer, while he harbors such views, to become a citizen of the United States of America.

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SECTION 4.—*Formalities of naturalization.*

A. DECLARATION OF INTENTION.

(*a*) *When made.*—This point has been sufficiently covered in the discussion of residence, supra, and nothing more need be said here on the matter.

(*b*) *Before whom made.*—Two considerations may arise here: First, before what courts may a declaration be made; secondly, before what officer of the court.

First. Before what court. It is obvious that logically any court that may naturalize may, of course, administer the declaratory oath and therefore the matter might be dismissed with a reference to the discussion under section 2 above. However, the question has been directly before the court in at least one case—Croesus Mining Co., etc., *v.* Colorado lands, etc., Co., 1884, 19 Fed., 78—in which the question was raised squarely whether or not, within the provisions of the mining laws to the effect that one who had made his declaratory oath might locate a mining claim, had sufficiently complied with its requirements if his declaratory oath had been taken before a district court. The court ruled affirmatively, and that any court of record might administer the declaratory oath. This is in accordance with the principles already set forth under section 2, above referred to.

Second. Before what officer of the court the declaration may be made. The act of 1790 did not provide for a declaratory oath. The act of 1795 merely provided for a declaration before designated courts, and the act of 1802 was to the same effect.

The act of 1824, some question having been raised as to the validity of declarations made before clerks of the courts, provided that the declaration required—

> shall, if the same has been bona fide made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

This point seems not to have stood thus until 1876, when it was incorporated into the Revised Statutes, that the declaration might be made before the clerk of any of the courts named in the section, and that all declaratory oaths taken before clerks prior to that time should be deemed valid.

Two questions have arisen, however, in this connection: (1) As to whether or not the oath might be administered at any place other than the clerk's office. The earliest case is that of In re Langtry, 1887, 31 Fed., 879, in which Mr. Circuit Justice Field declared that the declaratory oath administered to Emilie Charlotte Langtry, a subject of the Queen of Great Britain, at her residence in San Francisco, by a deputy clerk, who had for that purpose taken from the clerk's office the necessary blanks, was of no effect. The court said:

> He did not think that the statutes furnished any authority for the clerk of the court to take a declaration of one to become a citizen out of his (the clerk's) office, except in open court, and for that purpose to carry the records of the court to the private residence of the party. To permit the proceeding to pass without comment, would be to establish a dangerous precedent, and one calculated to give rise to gross abuses. The justice observed that to be an American citizen was a great privilege; that citizenship should be regarded as a sacred trust, and that persons seeking to take upon themselves its responsi-

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bilities ought to consider it of sufficient value to attend where the records of the court are held in proper legal custody.[a]

The same question was raised two years later in Andres *v.* Arnold, 1889, 77 Mich., 85. The relator, Andres, had applied for a writ of mandamus, and his right to the relief depended upon whether or not the declaratory oath had been properly administered to him. It appeared from the facts in the case that the oath had not been taken at the office of the clerk. After a considerable discussion of the early naturalizing laws and the language used in them, the court concluded that it was immaterial at what place the declaratory oath was taken, saying there was nothing in the language of the statute to indicate that the declaratory oath differed from the oaths taken before judges, justices, notaries, commissioners, or clerks on other occasions where an oath was required, and that therefore—

there is no reason why an oath may not be taken before him at any place where he happens to be, as well as before a judge, or justice, or notary, or commissioner. He is the person indicated by the law. When it dispenses with his action in open court, it dispenses with the only locality which is universally known for clerical action; and we can not require his action under the naturalization laws to be had in any particular spot, or room, or building without adding to the law a qualification of our own not indicated by its language and not required by any of its purposes.

The second question that has arisen in this connection is whether or not the oath may be administered by a deputy clerk away from the office of clerk. The question was raised in State *v.* Olin, 1868, 23 Wis., 309, 317, the court remarking:

Whether such declaration may, under any circumstances, be made before the *deputy* of such clerk, or must in all cases be made before the clerk himself, is a question which has been argued in this case, but which, not being necessary to the decision, will not be decided.

The question here raised, however, seems to be sufficiently answered by the cases discussed under the heading "Composition of the courts" (sec. 2 A, supra), in which it was shown that a deputy clerk may perform the functions of a clerk in naturalization proceedings. But the further question whether a deputy may perform the services of clerk away from a clerk's office has also been raised. It is entirely clear that under the ruling of the court in In re Langtry such a thing could not be possible. It seems equally clear that if the clerk himself might perform this duty away from his office, and that the deputy may perform the functions of the clerk, then the deputy may himself administer the declaratory oath away from the clerk's office or his own office. This was the effect of the rulings of the court in In re Boso, 1890, 6 Kulp, 83. The court in this case considered the earlier

[a] It should be noted that in this case the question was called up for consideration by the judge himself, and was not involved in any proceeding pending before the court, nor was there any special proceeding instituted for the purpose of questioning the validity of the declaratory oath. The report states that "Field, circuit justice, addressing Mr. Barnes, a counselor of the circuit court, inquired whether he was counsel for Mrs. Langtry. Mr. Barnes replied that he was not such counsel, although he had given her advice as to making a declaration to become a citizen. The justice then said that his attention had been called to the fact that Mrs. Langtry's declaration had been taken at her residence in this city, and not at the clerk's office, and that for that purpose the records of the court, in which such declarations are entered, had been carried by the deputy clerk to her rooms; and that great doubt existed in his mind as to the legality of the declaration thus made." The report then uses the language quoted above.

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case of Santo Scola, 1890, 8 Pa. County, 344, in which an opposite result had been reached, but declared itself unable to follow the reason and the result reached in this latter case.

(*c*) *What is a sufficient declaration.*—But little inquiry seems to have arisen as to what is necessary in a declaration of intention, or as to what the declaration must contain. The question can scarcely arise under the new statute, which has provided a blank form to be filled out by the applicant. The matter has, however, been the subject of some litigation, and was up for consideration in United States *v.* Walsh, 1884, 22 Fed., 644, the question being whether or not one could be convicted of perjury for falsely swearing in connection with his declaration of intention, the attorney for the defendant insisting that an oath was not necessary to accompany the declaration and that therefore there could be no punishment for perjury on a false oath so made. The court declared, however, that the declaration of intention must be sworn to.

An interesting question has also arisen in connection with this matter as to whether or not if more be done than the statute requires the excess shall invalidate the required portion of the ceremony. In Richards *v.* McDaniel, 1820, 2 Nott & McCord, 351, the applicant at the time of making his preliminary declaration took, thus prematurely, the oaths as to supporting the Constitution which are required when the applicant presents himself for naturalization. The court held that the oath to support the Constitution was immaterial and that the declaration was valid. At another trial of the same case a second question appeared as to whether or not the record of the declaration of intention should appear in the naturalization record. The court considered it unnecessary. Richards *v.* McDaniel, 1820, 1 McCord, 187.

This point will be discussed more fully in subdivision Bb of this section.

(*d*) *Where filed.*—There is but little authority on this question, and the most that can be done is in the way of inference in the matter. In In re Fronascone, 1900, 99 Fed., 48, the court, after discussing the provisions of the Revised Statutes relating to the declaration of intention, declared that such declaration must be made a part of the record, and the cases below under the heading discussing the manner of proving declaration of intention go to this point also. It is a fair inference from this that the declaration of intention, being part of the record, must of course be with the record, and therefore be filed with the records of the court wherever they may be kept.

(*e*) *Proof of intention.*—The requirements in this regard have been variously stated. In Berry *v.* Hull, 1892, 6 New Mexico, 643, the question was up for decision of the court, and Seeds, J., declared that "the certificate of his intention to become a citizen is the only proof receivable of that fact." In the case of State *v.* Barrett, 1889, 40 Minn., 65, the court declared that the declaration of intention might be proved by producing the original affidavit of such declaration or a copy of such declaration properly certified by the clerk or deputy clerk and attested by the seal of the court. In State *v.* Penny, 1850, 10 Ark., 621, the court considered as sufficient to prove the declaration an authenticated copy of the record which contained it. In In re Fronascone, supra, the court distinctly held, however, that such declaration could not be established by the vague oral statements of a

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single witness. (Distinguish between establishing the fact of a previous declaration of intention and the fact of the intention itself.)

(*f*) *Necessity for declaration.*—Except where the statute expressly provides otherwise, as in the case of minors and married women (widows), it is thoroughly well settled from a very early date that the oath of naturalization can not be taken unless there has been a prior declaration of intention made according to the form provided by law. There are a number of cases on this point. Ex parte Sanderson, 1804, 1 Cranch C. C., 219; McCarty *v.* Hodges, 1846, 2 Edm. Sel. Cas., 433; Ex parte Brownlee, 1848, 9 Ark., 191; In re Merry, 1880, 14 Phila., 212; In the matter of Desty, 1880, 8 Abb. N. C., 250; State *v.* Brandhorst, 1900, 156 Mo., 457.

A question which may be confused with the question of necessity for declaration is as to the proof of intention to become a citizen, which is required from minors who are not under the law-required to make the preliminary declaration. The Revised Statutes, section 2167, provide that he (the minor alien) shall—

> further declare on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona fide intention to become a citizen of the United States.

In the case of In re Fronascone, supra, the court held that the—

> vague oral statement of a single witness, commonly offered under section 2167, in substitution for the documentary evidence required by section 2165, can not be sufficiently relied upon

by the applicant. In taking his final oath, as indicated by the statute, it is necessary that he should make a declaration which is regularly required of applicants of age. This would seem to require that the same formality be gone through with as in the normal case, but that it be done at the time when the oath of naturalization is taken. In In re Randall, 1880, 14 Phila., 224, it was held that this declaration must be so made and must clearly set forth the time when the intention to become a citizen was actually formed.

(*g*) *Effect of declaration.*—It is thoroughly well established that although by special provision of the mining and agricultural laws certain rights have been given to those who have merely declared their intention to become citizens, still that one who has complied with this formality only is not a citizen of the United States. The question has arisen oftenest with reference to the power of the Federal courts to take jurisdiction over controversies arising between citizens and aliens, and it has been repeatedly held that one who had taken a declaratory oath was still an alien. Baird *v.* Byrne, 1854, 3 Wal, jr., 1; Lanz *v.* Randall, 1876, 4 Dill., 427; Maloy *v.* Duden, 1885, 25 Fed., 673; City of Minneapolis *v.* Reum, 1893, 6 C. C. A., 31; s. c. 56 Fed., 576, and see In re Wehlitz (1863), 16 Wis., 443; State *v.* Cole, 1864, 17 Wis., 674; In re Conway, 1863, id., 526.

The State courts have held that they did not lose jurisdiction within the constitutional provision of a case which arose between an alien and one who had taken his declaratory oath, on the ground that the latter was still an alien and therefore the suit was between two aliens. Orosco *v.* Gagliardo, 1863, 22 Cal., 83. Nor was one who had taken the declaratory oath a citizen within the meaning of the statutes of Congress, which provided that a citizen of the United States who had suffered from Indian depredations might recover from the Government the amount of his losses. Johnson *v.* United States, 1893, 29 Court of Claims, 1. Moreover, it has been held that

it is immaterial that at the time of taking the declaration the applicant also took the oath of allegiance, since the latter was unauthorized and of no effect. Richards *v.* McDaniel, supra. And, further, it is immaterial as to the question of citizenship, that the taking of the declaratory oath may entitle the applicant, under the suffrage laws of the State, to vote. Lanz *v.* Randall, supra, and Berry *v.* Hull, supra.

There is some conflict as to the effect upon the rights of minor children alien born to inherit from a father who has merely taken his declaratory oath of citizenship. In Schrimpf *v.* Settegast, 1873, 38 Tex., 96, the court held that under such conditions the alien took. A directly opposite result was reached in White *v.* White, 1859, 2 Met. (Ky.), 189. These decisions, of course, must be viewed from the standpoint of the local regulations with reference to the descent of land.

The question has also arisen as to whether or not the taking of the declaratory oath makes a citizen of the wife of the declarant. It is entirely clear on principle that such should not be the effect, and such was the decision reached by the court. Dorsey *v.* Brigham, 1898, 177 Ill., 250.

It is of interest in passing to note the effect of a declaration to become a citizen of the United States under certain treaty provisions. For instance, it was provided by our treaties with Mexico that those who desired to become American citizens should indicate such desire by a declaration of intention and that they then should be considered American citizens. The courts have declared that such declaration was all that was necessary to make of such applicants American citizens; that no further step in the ordinary process of naturalization need be taken. Carter *v.* Territory, 1859, 1 New Mex., 317.

(*h*) *Declaration with residence.*—It has sometimes been sought to establish the proposition that declaration with a long continued period of residence thereafter, the declarant having taken no further steps to naturalization, should make of the party a citizen. But the courts have steadily refused to adopt such a principle. One of the most extreme cases on this point is that of Lanz *v.* Randall, supra, in which there had been a residence of some fifteen years after the first declaration of intention, but the court held that this was of no avail in making of the declarant a citizen. The same rule has been held even where the applicant came to this country as a minor 13 years old; had, sometime after becoming of age, taken his declaratory oath, but had not, after a total of eighteen years of residence, then taken out his naturalization papers. The court declared he was not a citizen. Johnson *v.* United States, supra.

It seems clear of course that if the period of residence has not been sufficient to give a right to take out the second papers it should not be equivalent to naturalization, and this has been held in Baird *v.* Byrne, supra; and see generally on the topic Richards *v.* McDaniel, 1820, 2 Nott & McCord, 351.

(*i*) *When the declaration is dispensed with.*—The declaration is never dispensed with except by the positive provisions of the statutes. It has been customary to dispense with it in the case of minors, and in the case of widows of aliens who have made the declaration; and by some special statutes relating to soldiers and seamen. The cases of In re Fronascone, supra; Schutz's Petition, 1886, 64 N. H., 241; and In re Randall, supra, bear upon the question where it concerns infants.

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B. PETITION FOR NATURALIZATION.

(*a*) *When the petition may be made.*—This point has already received a sufficiently full consideration under the heading of "Residence," section 3 B, supra, where the extracts from the statutes controlling this matter were collected. It is sufficient here to say that the usual period that must elapse before an alien might take out his naturalization papers, with the single exception of fourteen years provided by the statute of 1798, has been five years. While this period, as suggested, provided that proceedings could not be brought earlier than that, they, of course, might be instituted at any time after that period.

(*b*) *To whom the petition must be made.*—The statutes are uniform in providing that the petition must be made to the court itself, and the cases generally, in which any question of citizenship is involved, show that the proceedings have usually been before a court. One case, however, In re Clark, 1854, 18 Barb., 444, shows that in New York at least it was for a considerable time the custom for clerks of the court to issue naturalization papers to applicants, but in the case cited Dean, J., took occasion to express his disapproval of this method and to assert that the proceedings could be lawfully taken only by the court itself.

(c) *What the petition must contain.*—One of the best brief statements of what must be contained in the petition for naturalization is that given In re Bodek, 1894, 63 Fed., 813, 814, where the court says:

> Every such petition must, of course, allege the existence of all facts and the fulfillment of all conditions, upon the existence and the fulfillment of which the statutes which confer the right asserted have made it dependent, and I believe that the petitions usually presented conform to this rule.

As to just what these allegations are must be determined by reference to the statutes under which the naturalizing proceedings were held. The Revised Statutes, section 2165, provide that—

> any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified that he has resided two years at least within the jurisdiction of the United States, and one year at least immediately preceding his application withn the State or Terrtory where such court is at the time held.

Other cases bear out the statement made In re Bodek. The court In re Alien, 1845, 7 Hill, 137, expressed the same idea by saying that the petition must allege a compliance with all conditions. In Cumming's petition, 1860, 41 N. H., 270, two questions arose, the alien in that case being a minor at the time of his immigration into this country and was seeking to be naturalized under the act of Congress of March 26, 1824. The petition alleged in substance the residence of the petitioner with his father's family in a specified county in June, 1848, when he was a minor under the age of 18 years, continued residence therein until August, 1857, and a subsequent residence until August, 1859, in various parts of the United States, when he returned to his father's family in the county named, where he had since remained. This was held faulty on the ground that it contained no allegation that it had been the bona fide intention of the applicant for three years next prior to his application to become a citizen of the United States. The court declared, however, that this

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defect might be readily remedied by an amended or new application. The court further declared that the failure in the application for naturalization to allege a residence in the State for the year immediately preceding the application for naturalization was not a fatal defect; and, as already indicated with reference to this case, the holding was made that this period of residence did not need to be the last year preceding the application.

In Richards *v.* McDaniel, 1820, 2 Nott & McCord, 351, a petition alleged that the petitioner was an alien born under the allegiance of the King of Great Britain and was desirous of becoming a citizen of the United States. The petitioner then prayed that the judge would cause to be administered in open court the oath prescribed by the act of Congress. This was supplemented by the oath of allegiance and renunciation of foreign allegiance. The court seems to have considered this petition sufficient, though the actual question decided in the case, as has been suggested above, was that the oath of allegiance and renunciation taken at the time of the declaratory oath was mere surplusage and of no effect. The decision, of course, is therefore of little value.

(*d*) *The final hearing.*—The act of 1790 provided for the taking of an oath to support the Constitution of the United States, "which oath or affirmation such act shall administer." The act of 1795 provided for such declaration on oath or affirmation "before some one of the courts aforesaid." Practically the same provision was made in the act of 1802 and subsequent acts down to the Revised Statutes, section 2165—second—of 1878, and it was substantially reenacted in the present recent law. The matters to be thus sworn to consist of the renunciation of allegiance and fidelity to any foreign State, indicating the sovereign by name, and a further oath to defend the Constitution of the United States and to bear true faith and allegiance to the same. This is to be recorded by the clerk of the court, and forms, as will be later seen, a part of the record. At this hearing also certain matters must be proved to the satisfaction of the court. One of the best statements on this is also to be found in In re Bodek, supra, in which the court continued, after the quotation given above:

> But the presentation of the petition merely brings the matter before the court, and the burden then rests upon the petitioner to establish its material allegations by such evidence as the law has made requisite.

And the same idea is expressed in In re Randall, supra.

The question has arisen once as to whether or not in taking this oath the defect is fatal that the sovereign was not specified by name, in the particular case the oath being taken "to renounce and abjure all allegiance and fidelity * * * to the Queen of Great Britain and Ireland," the name "Victoria" being omitted. The court held that this omission was not fatal. Ex parte Smith, 1847, 8 Blackf., 395.

Section 5.—*Nature of naturalization proceedings.*

At various times the courts have been called upon to decide, usually because of some attack made upon the record of naturalization or because evidence invalidating the same has been sought to be introduced, what the true nature of the naturalization proceedings is. The matter seems to have been first acted upon by Washington, J., in

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Campbell *v.* Gordon, 1810, 6 Cranch, 176, 182, where he said: "The oath, when taken, confers upon him the rights of a citizen, and amounts to the judgment of the court for his admission to those rights;" and the same principle was declared in the later case of Spratt *v.* Spratt, 1830, 4 Peters, 393, Marshall, C. J., saying:

> The various acts upon the subject submit the decision on the right of aliens to admission as citizens to courts of records. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry; and, like every other judgment, to be complete evidence of its own validity.

This remark of the Chief Justice has been frequently cited by the courts, and was expressly followed in State *v.* Hoerflinger, 1874, 35 Wis., 400; McCarthy *v.* Marsh, 1851, 5 N. Y., 263, 279; Ex parte Cregg, 1854, 2 Curtis, 98, 100. More recently the matter has been again stated in the Supreme Court of the United States, this time by Mr. Justice Hunt, as follows:

> A certificate of naturalization issues from a court of record when there has been the proper proof made of a residence of five years, and that the applicant is of the age of 21 years, and is of good moral character. This certificate is, against all the world, a judgment of citizenship, from which may follow the right to vote and hold property. It is conclusive as such. Mutual Benefit Life Ins. Co. *v.* Tisdale, 1875, 91 U. S., 238, 245.

The State courts have taken exactly the same position where the question has come up before them. In State *v.* McDonald, 1877, 24 Minn., 48, 58, the court said:

> All of the other objections urged by the relator to the validity and sufficiency of defendant's alleged naturalization appear to us to be disposed of by the fact that the record upon which the defendant relies is a genuine record of the district court of Ramsey County, in due form, of what purport to be regular proceedings in naturalization in that court, resulting in a judgment which admits the defendant to become a citizen of the United States.

The principle, indeed, may now be considered as absolutely settled, as will be seen by reference to the following cases: Ritchie *v.* Putnam, 1835, 13 Wend., 524, 526; In re Alien, 1845, 7 Hill, 137, 141; People *v.* Snyder, 1869, 41 N. Y., 397, 409; The Acorn, 1870, 2 Abb. C. C., 434, 444; State *v.* McDonald, 1877, 24 Minn., 48, 58; In re Coleman, 1879, 15 Blachtf., 406; Pintsch Compressing Co. *v.* Bergin, 1897, 84 Fed., 140, 142; Green's Son *v.* Salas, 1877, 31 Fed., 106.

It follows, of course, that if a naturalization proceeding is to be considered as a judgment it is to be governed in all particulars with reference to its proof, impeachment, etc., as other judgments, and the courts have insisted in so regarding it; and in discussing the propriety of any evidence looking to an attack upon a certificate they freely quote cases and rules which are applied to judgments in general. See United States *v.* Norsch, 1890, 42 Fed., 417 (in which the matter was treated as an original proceeding seeking to impeach on the ground of fraud). And see, generally, to the effect that such proceedings are judgments. In the matter of Clark, 1854, 18 Barb., 444; Harley *v.* State, 1867, 40 Ala., 689; In re McCoppin, 1869, 5 Sawy., 630; Scott *v.* Strobach, 1873, 49 Ala., 477; United States *v.* Walsh, 1884, 22 Fed., 644.

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SECTION 6.—*How naturalization is proved.*

A. THE RECORD.

The normal method of proving naturalization is by the production of the record or certified copy thereof. One of the best expressions of the rule was that given in the dictum of the court in Contzen *v.* United States, 1900, 179 U. S., 191, 196: "The usual proof of naturalization is a copy of the record of the court admitting the applicant, though, in some instances, there may be facts from which, in the absence of the record, a jury may be allowed to infer that a person having the requisite qualifications to become a citizen had been duly naturalized." This rule has been followed in Belcher *v.* Farren, 1891, 89 Cal., 73; Bode *v.* Trimmer, 1890, 82 Cal., 513; McCarthy *v.* Marsh, 1854,, 5 N. Y., 263. In Green's Sons *v.* Salas, 1887, 31 Fed., 106, 110, the court declared that it found "nowhere a departure from the rule that the record must be produced or accounted for." Where the question has been whether or not a party was entitled to file on a mining claim an affidavit of the party himself has been held sufficient for the purpose of proving the fact of naturalization, the court saying: "The statute, for the purpose of acquiring a mining location, makes the affidavit of the party himself competent evidence of his naturalization. It is for you to determine the sufficiency of the evidence to establish the fact." This case was affirmed on appeal in 11 Fed., 125.

The courts have also repeatedly held, as suggested by Mr. Chief Justice Fuller in Contzen *v.* United States, supra, that "in the absence of the record a jury may be allowed to infer that a person having the requisite qualifications to become a citizen had been fully naturalized." The great case in which this was discussed is Boyd *v.* Nebraska, 1892, 143 U. S., 178. While there has been considerable discussion as to the real decision of this case (se Bahuaud et al, *v.* Bize et al., 1901, 105 Fed., 485), it seems to be now settled that it held "all of the inhabitants of the Territory of Nebraska who theretofore declared their intentions to become citizens were, by the act of admission of the State into the Union, naturalized as citizens of the United States." Mr. Chief Justice Fuller argued at considerable length the proposition quoted from him above, and reached the conclusion he afterwards expressed as quoted. As suggested, the matter was up for consideration at a very much earlier date. In Blight *v.* Rochester, 1822, 7 Wheat., 535, 546, Mr. Chief Justice Marshall said:

> The alienage of James Dunlap being fully proved, and the laws of Virginia requiring, as indispensible to his citizenship, that he should take the oath of fidelity to the Commonwealth, in a court of record, of which the clerk is directed to grant a certificate, we do not think that this fact, which, had it taken place, must appear on record, ought to be presumed, unless there were some other fact, such as holding an office of which citizens alone were capable, or which require an oath of fidelity, from which it might be inferred."[a]

There have been some statements as to what facts are sufficient to meet the requirements in such cases. In Nalle *v.* Fenwick, 1826, 4 Randolph, 585, there was no positive proof from the record that one Rice had been naturalized. He was known to be an Irishman by

[a] The question here was rather as to the State citizenship of the party, but the principle in the matter appears the same.

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birth. The plaintiff produced witnesses who expressed "their confident belief that Rice had taken the oaths required by North Carolina to make him a citizen of that State and they related the facts, which strongly corroborated their opinion." These facts were that he was a partisan at elections; that an alien, such was the condition of the times, could not have taken such part with impunity; that he was an inhabitant of the town of Edenton in 1779, and that he could not have remained there an alien at that time; that he had received deeds for land which men were too intelligent to grant to an alien; that the one who witnessed the deed would have known an alien could not take and would have refused so to do had Rice been an alien; that he was once a candidate to represent his country in the legislature; that he was employed by one Savage, a shrewd, sensible man of business, who gave the party his confidence in a high degree and later entered into "articles of copartnery" with him. The court concludes: "If all this mass of evidence, after the lapse of forty-five years, be not sufficient to authorize the conclusion that Rice was a citizen, what less than point blank proof will do?"[a]

In Sasportas *v.* De La Motta, 1858, 10 Rich. Eq., 38, it appeared that an alien was a resident of South Carolina, at least on July 4, 1776; that he fought as a Whig officer in some of the battles of the Revolution; that he acquired and conveyed real estate; was always received and reputed as a citizen, and that his children, though born in France while he and his wife were there, he undergoing surgical operations on his eyes, had always claimed to be American citizens. The court held him to be a citizen and his children citizens. The same principle was applied in People *v.* McNally, 1880, 59 How. Pr., 500; and see Hogan *v.* Kurtz, 94 U. S., 773, where, with reference to a person, the court said, "enough appears to show that he possessed every requisite qualification to enable him to become a citizen at any time, and that he constantly exercised rights belonging to citizens; and, in view of the great lapse of time acquired the property, the court here is clearly of opinion that the assignment of error (that he was not a citizen) must be overruled." See also Rexroth *v.* Schein, 1903, 206 Ill., 80, 83.

WHAT RECORD MUST CONTAIN.

(a) A considerable number of decisions have involved the point as to what a record must contain in order that it shall be sufficient evidence of naturalization. It seems clear, as a first proposition, that the record need not show that all the legal prerequisites have been complied with. Harley *v.* State, 1867, 40 Ala., 689, 697; Ritchie *v.* Putnam, 1838, 13 Wend., 524. Accordingly, the decisions have held that it need not appear that a previous declaration of intention has been made. Stark *v.* Chesapeake Insurance Co., 1813, 7 Cranch, 420; Vaux *v.* Nesbit, 1826, 1 McCord Ch., 352, 370. Nor need the record show that the fact of the declaration having been made was proved on the final hearing. The Acorn, 1870, 2 Abb. U. S., 434, 443. However, it appears from the record that the declaration of intention has not been made, the naturalization proceedings are, of course, null and void and the record is of necessity insufficient. Vaux *v.* Nesbit, supra. And see Banks *v.* Walker, 1848, 3 Barb. Ch., 438. So it was held that

[a] The question here seems to be one of State citizenship also.

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where the record contained inaccurate recitations as to the residence, the applicant being entitled to admission on other grounds, such inaccuracies were not material. In re McCoppin, 1869, 5 Sawy., 630. Nor is it necessary that the evidence on which the court acted should be set forth. Spratt *v.* Spratt, 1830, 4 Peters, 393, 407; McCarthy *v.* Marsh, 1857, 3 Parks Crim., 358, 376. Where the record merely shows, however, that the declaration of intention was made by an infant (this, under the statute, being permitted at the time of naturalization), the court declared it would not presume that the applicant asked for immediate naturalization. Matter of Desty., 1880, 8 Abb. New Cas., 250. It is immaterial that the record does not show facts necessary to give the naturalizing court jurisdiction, because this jurisdiction, it was declared, depended on the statute, not on the facts. United States *v.* Walsh, 1884, 22 Fed., 644, 648.

In some cases the records of naturalization have been no more than docket entries in books kept for that purpose. The decision on this point are in two directions, though not of necessity inconsistent. For instance, it has been held that an entry in the "Great Register" of the country is not sufficient to prove naturalization. Prentice *v.* Miller, 1890, 82 Cal., 571. Nor was any entry of the name in the "Book of Aliens," where there is no application, oath, or other record relating to this transaction, considered sufficient. Green's Son *v.* Salas, 1887, 31 Fed., 106. However, where the docket entries thus made stood in place of any other record they have been held sufficient. In matter of Christern, 1878, 11 Jones & Spencer 523; In re Coleman, 1879, 15 Blatchf., 406, 426.

The question of how and for what naturalization proceedings may be impeached is taken up infra.

(*b*) *How the record is regarded.*—The record is considered to be complete evidence of its own validity (Spratt *v.* Spratt, 1830, 4 Peters, 392, 406) and conclusive as to the existence of necessary facts (United States *v.* Gleason, 1897, 78 Fed., 396), unless fraud be present. The Acorn, 1870, 2 Abb. U. S., 434. Being a record, it may be impeached only as other records are impeached. Pintsch Compressing Co. *v.* Bergin, 1897, 84 Fed., 140; McCarthy *v.* Hodges, 1846, 2 Edm. Sel. Cas., 433, 440. In the absence of its loss or destruction it must be proved by itself. Green's Son *v.* Salas, 1887, 31 Fed., 106; Prentice *v.* Miller, 1890, 82 Cal., 570, 575; Belcher *v.* Farren, 1891, 89 Cal., 73. However, when the record is lost or destroyed, secondary evidence may be admitted to prove its contents. In Strickley *v.* Hill, 1900, 22 Utah, 257, the court said: "The general rule is that where a record has been lost or destroyed, or by lapse of time or by death of the person naturalized, and the record can not be produced, secondary evidence is admissable to prove naturalition." Other decisions are entirely in accord. Hogan *v.* Kurtz, 1876, 94 U. S., 773, 777; People *v.* McNally, 1880, 59 How. Pr., 500; Kreitz *v.* Behrensmeyer, 1888, 125 Ill., 141, 198.

(*c*) *How the record may be amended.*—It seems well settled that a record may be amended *nunc pro tunc.* In matter of Christern, 1878, 11 Jones & Spencer, 523. This may be done to enlarge the record of the declaration of intention to include omitted parts, and this even after proceedings looking toward an impeachment of the record have been begun. State *v.* McDonald, 1877, 24 Minn., 48. The conditions

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under which such a record may be so amended are discussed to some extent in Matter of Desty, 1880, 8 Abb. New Cas., 250. In this case the court refused to so amend the record where it failed to show that any of the steps antecedent to the granting of the certificate had been taken.

B. THE CERTIFICATE OF NATURALIZATION.

In discussing the value and force of a certificate of naturalization the courts have not always been clear. They have sometimes seemed to treat it as the record and sometimes as the judgment. While the recent law contains a blank form of certificate, such form was not provided by the earlier laws, and consequently it is not clear what the certificate should contain—whether any or all of the record must appear on its face. The question received a considerable consideration in Green's Son *v.* Salas, 1887, 31 Fed., 106; and see the comments on this point in the early case of Campbell *v.* Gordon, 1809, 6 Cr., 176.

Some courts have declared that the certificate submitted was not sufficient evidence to show that the party was naturalized. See Miller *v.* Reinhart, 1855, 18 Ga., 239, where the form was as follows:

STATE OF GEORGIA, CHATHAM COUNTY, UNITED STATES OF AMERICA.

In the Superior Court of Chatham County.

To all whom these presents may come, greeting:

I, John F. Guilmartin, clerk of said court, do hereby certify and make known that at a superior court held at Savannah, in and for the county aforesaid, before the Hon. William B. Fleming, esq., judge of said court, on the 24th day of January, 1855, James M. Reinhart, an alien and subject of the King of Germany, petitioned the court to be admitted a citizen; and having in all things complied with the law in such case made and provided, the said James M. Reinhart was accordingly admitted a citizen of the United States of America, having first taken and subscribed in open court the oath of naturalization.

Given under my hand and seal, etc.

[L. s.] JNO. F. GUILMARTIN, *Clerk S. C. C. C.*

Other courts have said that the certificate is prima facie conclusive, but that this may be rebutted. Vaux *v.* Nezbit, 1826, 1 McCord Ch., 352, 370; In re Gee Hop, 1895, 71 Fed., 294. In Brown *v.* Shilling, 1856, 9 Md., 74, 82, indiscussing the sufficiency of a certificate which had been submitted as proof of naturalization, the court said:

We must assume that the court which invested her with citizenship inquired into her capacity for that purpose, and having issued the proper certificate we can not go behind it, but must acknowledge the rights of those claiming under her as a citizen.

In People *v.* Pease, 1860, 30 Barb., 588, 604, the court said:

The judge at the trial also suffered the party to attack the certificate of naturalization by evidence *aliunde*, and to show that it was procured by fraud; that its recitals were false, and that the party was not entitled to be naturalized. The certificate was the legal evidence of the judgment of a court of competent jurisdiction collaterally in question in the action. It was final and conclusive, it imported absolute verity, and could not, if valid on its face, be thus impeached in this action. When alienage is in issue, the judgment of the court admitting the alien to become a citizen is conclusive evidence upon that point. (Ritchie *v.* Putnam, 13 Wend., 524). A record of naturalization can not be contradicted by extrinsic proof that no declaration of intention had in truth been made. (Banks *v.* Walker, 3 Barb. Ch. Rep., 488.) Like any other judgment, it is complete evidence of its own validity. (Spratt *v.* Spratt, 4 Peters, 393.)

It will be noted here that the court seems to make no distinction between the record and the certificate. The same confusion seems to

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exist in the case of Commonwealth *v.* Towles, 1835, 5 Leigh, 743, where the certificate is declared impeachable if it seems to show that the formalities of naturalization were not complied with. The courts have also held that a certificate may be void on its face. The two principal cases on this point are In re Hong Yen Chang, 1890, 84 Cal., 163, and In re Gee Hop, 1895, 71 Fed. 274, in both of which cases certificates of naturalization had been given to Chinamen.

The question has also arisen, What, if any, presumption exists in favor of proceedings of naturalization? This received considerable attention in one of the cases last cited, In re Gee Hop, where the court declared that no presumption exists in favor of a judgment where the powers are special. And see also in this connection People *v.* Sweetman, 1857, 3 Parks Crim., 358, 376.

C. METHOD OF PROVING NATURALIZATION.

This point has already been covered to a considerable extent by the cases discussed in this section, but the following additional points may be noted. It is laid down that "citizenship may be proved, like any other fact, and is a question for the court and jury to pass upon." Strickley *v.* Hill, 1900, 22 Utah, 257, 269. And, as shown above, it may be proved, or at least it may be inferred, from the general circumstances or conditions surrounding a person. See Boyd *v.* Nebraska, supra, and cases cited in connection with it. In the North Noonday Mining Co. *v.* Orient Mining Co., 1880, 6 Sawy., 299, the court declared that for purposes of filing on a mining claim, citizenship might be proved by affidavit of the party himself. It is generally laid down, however, that naturalization may not be proved by parol. This seems to be the rule on which the courts generally act. Green's Son *v.* Salas, 1891, 31 Fed., 106; Belcher *v.* Farren, 1891, 89 Cal., 73; Slade *v.* Minor, 1817, 2 Cr. C. C., 139; Bode *v.* Trimmer, 1890, 82 Cal., 513; Miller *v.* Prentice, 1889, 82 Cal., 104, s. c. *id.*, 571.

SECTION 7.—*Impeachment of naturalization proceedings.*

It is clear that naturalization proceedings may not be impeached for any of the defects discussed in the preceding section (a) *What the record must contain*, since they do not effect the validity of the record.

However, there are matters for which the proceedings may be impeached, and in discussing this topic this distinction must be kept clearly in mind—the difference between an action in which the judgment will be that the naturalization proceedings are null and void, and that the certificate of naturalization be delivered up and canceled, and those actions in which the citizenship of one of the parties or his privies is called into question more or less collaterally.

A. WHO MAY IMPEACH.

In Pintsch Compressing Co. *v.* Bergin, 84 Fed., 140, the rule now generally followed was laid down as follows, the question arising over the conclusiveness of a judgment of naturalization:

> The record thus ordered on the application of the respondent evidenced a solemn judicial judgment that she was entitled to receive and did thereby

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receive from the United States the franchise of citizenship. Is anyone entitled to proceed for its rescission unless the United States themselves, or by their authorization? No precedent, no text writer, and no rule of law is cited which justifies us in answering this question affirmatively. The fundamental principle that, in the absence of a statute of authorization, only the United States can proceed judicially to recall or rescind franchises granted by them, has peculiar force with reference to citizenship, as to which so great a variety of interests, political and individual of high importance is concerned, that the jurisdiction of inquiry should be especially fixed and limited. Even when proceeding diplomatically and in their relations with foreign powers the United States reserve to themselves the exclusive right to question the naturalization proceedings of their local tribunals.

The earlier case of United States *v.* Norsch, 1890, 42 Fed., 417, had acted in accordance with this principle, and see also United States *v.* Gleason, 1897, 78 Fed., 396.

The decisions do not definitely determine or enumerate the officers of the United States who may bring such an action. The action has been sustained as proper where it was brought at the instance of the immigration commissioners. United States *v.* Kornmehl, 1898, 89 Fed., 10. The case of In re Langtry, 1887, 31 Fed., 879, is of peculiar interest in this regard. In that case, as already set forth, the court acted on its own motion in impeaching the validity of proceedings connected with the taking of the declaratory oath. And see the case of Green's Son *v.* Salas, 1887, 31 Fed., 106. A more recent case has held that a State can not impeach the proceedings. Peterson *v.* State, 1905, 89 S. W., 81. This view is not in accord with the dicta of some of the earlier cases which are cited below.

It appears clearly established that private parties may not impeach the record of naturalization. The leading case on this subject is that of Commonwealth *v.* Paper, 1868, 1 Brewster, 263, 267, in which certain citizens petitioned that certificates of naturalization which had been granted to persons named should be vacated and set aside. The court said:

I shall grant the rule; but it is done on the condition that the attorney-general shall appear on the record to prosecute the rule. One citizen can not impugn the action of a court in naturalization cases so far as to require the cancellation of naturalization papers. Some public authority must do this; and I understood when this petition was handed up that the attorney-general was to be the official party to the proceeding.

This case was followed in the later case of In re Shaw, 1893, 2 Penna. Dist. C., 250, 252, in which a marine engineer's association undertook to have set aside Shaw's certificate of naturalization. This association had gone to the pains of investigating Shaw's proceedings and of collecting evidence to show that they were invalid. In the course of his opinion Reed, J., said:

The course taken in the present case, though entirely straightforward, is both unauthorized and impertinent, for neither the petitioner, nor the body of which he is a member, has the slightest grievance to complain of. The wrong, if wrong there be, is to the nation and to the State. The Attorney-General of the United States, by himself or his subordinates, the attorney-general of Pennsylvania, or the district attorney of this county, is thereof the proper vindicator. (See Com. *v.* Paper, 1 Brewster, 269, Supreme Court of Pennsylvania.) To these officers the petitioner, not as a marine engineer, either by himself or his associates, but as an American citizen, could at any time apply. A hearing to the representative of the person injured by its error will never be denied by any court faithful to its duty, but the attempt to remedy a public wrong, at the instance of a private person, when no reason is shown for the absence of the officers of the law duly authorized in this connection, can only lead to confusion, as well-tried experience has shown.

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These cases were expressly followed in In re McCarran, 1894, 8 Misc., 482, approved on appeal in 1897, 16 App. Div., 311. As already suggested, the dicta in these cases would suggest that a State might act, though the recent case of Peterson *v.* State, supra, is, as stated, directly against such a conclusion. The dicta of the above cases, to the effect that the Attorney-General of the United States might act, would seem entirely sound.

Private parties have attempted to impeach naturalization proceedings on a quo warranto against the incumbent of an office, the incumbent's right to which is being contested. Where the allegation is that the one holding the office is himself an alien and the naturalization proceedings sought to be impeached or passed upon are the proceedings upon which he relies for his own citizenship, the courts have refused to permit this question to be raised in a quo warranto action. State *v.* Brandhorst, 1900, 156 Mo., 457; State *v.* McDonald, 1877, 24 Minn., 48; State *v.* Penny, 1850, 10 Ark., 621. And so also was the holding where the action, though seemingly not strictly a quo warranto, was one brought to try the right to an office. Scott *v.* Strobach, 1873, 49 Ala., 477. Where, however, under such a quo warranto proceeding, the question has been, not as to the alienage of the one holding the contested office, but of some of his electors, the courts have permitted the question to be gone into. People *v.* Pease, 1860, 30 Barb., 588 (the court saying that this was not a collateral attack on naturalization proceedings. Pratt, J., dissenting); Contested Elections of 1868, 1870, 2 Brewster, 130; Beardstown *v.* Virginia, 1876, 81 Ill., 541.

The proceedings may be in a way impeached by the party himself, it would seem, where he applies that they be amended *nunc pro tunc*, particularly where, as will usually be the case, this involves the delivering up of the certificate already received and the issuance of a new one. In this connection the following cases are of importance: In matter of Christern, 1878, 11 Jones & Spencer, 523; State *v.* McDonald, 1877, 24 Minn., 48; In re McCoppin, 1869, 5 Sawy., 630 (where the petition was for renaturalization); In matter of Desty, 1880, 8 Abb. New Cas., 250. It has been said, however, that if the record is void on its face it may be attacked at any time and in any proceedings. In re Yamashita, 1902, 30 Wash., 234 (where admission to practice before the Washington bar was denied to a native of Japan who held a certificate of naturalization).

The recent statute, while authorizing proceedings on the part of the United States, both at the time the applicant is admitted to citizenship (sec. 11) and at any time later (sec. 15) for irregularities specified, contains no provision as to whether or not State officials may also act under such conditions. That question still remains open. It is not unlikely, however, that the ruling in Peterson *v.* State, supra, will be usually followed.

B. FOR WHAT IMPEACHED.

In a general way, it is true, of course, that the judgment of naturalization may be impeached for whatever would render any judgment of a court invalid. It is perefctly clear that it may be impeached for fraud. United States *v.* Norsch, 1890, 42 Fed., 417, 419. See in matter of McCarran, 1894, 8 Misc., 482. However, this fraud must be

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of a particular kind. It must be positive rather than negative. In United States *v.* Norsch there was an attempt to set aside naturalization proceedings on the ground of fraud, because the applicant had presented himself for naturalization, knowing that he was not entitled thereto. In ruling that this was not fraud within the meaning of the naturalization statutes the court said:

> A person does not commit a fraud, in a legal sense, by merely applying to a court of justice for relief or for the grant of some privilege, even though the applicant believes that under the law, rightly administered, he is not entitled to the relief sought or to the privilege claimed. Whatever a person's own opinion may be touching his right to relief in a given case, he is entitled to take the judgment of a court having jurisdiction to hear and determine the cause, and in so doing he commits no fraud. A litigant in such case only crosses the line dividing legal frauds from conduct that is merely reprehensible from a moral standpoint, when he resorts to false testimony or to some trick or artifice with a view of deceiving the court and thereby obtaining a judgment to which he is not entitled. The present bill neither shows that the decree sought to be avoided was procured by false testimony given on behalf of the applicant on the hearing of the application for naturalization, or by means of any other fraudulent device.

In United States *v.* Kornmehl, 1898, 89 Fed., 10, where the fraud consisted in false affidavits, the papers were revoked. It seems logical and in accordance with the cases already considered, in discussing the capacity in which State courts act, that naturalization proceedings may not be attacked for a false oath which is extrajudicial, and the cases have so held. United States *v.* Grottkau, 1887, 30 Fed., 672; State *v.* Helle, 1834, 2 Hill (S. C.), 290.

The proceedings may be attacked also for improper vouching by an alien (Commonwealth *v.* Paper, 1868, 1 Brewster, 263); where the record on its face shows that there are defects (Banks *v.* Walker, 1848, 3 Barb. Ch., 438; McCarty *v.* Hodges, 1846, 2 Edm. Sel. Cas., 433), and where the certificate is void on its face (In re Yamashita, 1902, 30 Wash., 234). In Scott *v.* Strobach, 1873, 49 Ala., 477, the court adjudged that a certificate valid on its face could not be collaterally attacked on ground of fraud and of untrue recitals. The case In re Langtry, 1887, 31 Fed., 879, should also be noted here as showing that the granting of the first papers may be annulled on the ground that the declaratory oath was taken away from the clerk's office; but in this connection the case of Andres *v.* Circuit Judge, 1889, 77 Mich., 85, contra, should be noted; and see the cases cited under section 4 A–b.

C. IN WHAT WAY THE PROCEEDINGS MAY BE ATTACKED.

Where the purpose for questioning the proceedings has been to annul them the bills framed to accomplish this result are variously stated. There may be bills asking for an order to show cause why naturalization proceedings should not be vacated (Commonwealth *v.* Paper, 1868, 1 Brewster, 263); or to show cause why naturalization proceedings should not be set aside and canceled (United States *v.* Kornmehl, 1898, 89 Fed., 10); or by a suit to cancel the certificate (United States *v.* Norsch, 1890, 42 Fed., 417); or to annul "a proceeding under the naturalization laws" (Pintsch Compressing Co. *v.* Bergin, 1896, 84 Fed., 140); or to "set aside an order" admitting to citizenship (In matter of McCarran, 1894, 8 Misc., 482—apparently sought in aid of

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an ejectment suit); or "to set aside a judgment admitting defendant to citizenship" (Peterson *v.* State, 1905, 89 S. W., 81); or on a "rule to vacate and annul decree of naturalization, and rescind certificate issued thereon" (In re Shaw, 1892, 2 Pa. Dist. C., 250); or by the court's own motion (In re Langtry, 1887, 31 Fed., 879; and see Green's Son *v.* Salas, 1887, 31 Fed., 106).

Where the question before the court has been merely whether or not a certain individual was a citizen, the judgment having no reference to the cancellation or annulment of the naturalization proceedings, there has been of course no bill filed, and the question has come up more or less collaterally to the main question of the suit. Moreover, there seems to be no limitation as to the kinds of proceedings in which citizenship may be thus called into question. The following cases will suggest the range: In Spratt *v.* Spratt, 1830, 4 Peters, 393, the action was a suit in replevin in which the questions at issue were stated by Chief Justice Marshall, as follows: "It appears to the court to depend essentially on two questions: 1. Was James Spratt a citizen of the United States? 2. If he became a citizen, did the premises in the avowry mentioned pass to his alien relations, who are his next of kin?" The courts have permitted also examination into the citizenship of grand jurors who have found indictments against the accused. In Commonwealth *v.* Towles, 1835, 5 Leigh, 743, this question was raised by a plea in abatement. Note: It is settled that the question of citizenship may be properly raised by a plea in abatement, Hollingsworth *v.* Duane, 1801, Wall C. C., 51; De Wolf *v.* Ribaud, 1828, 1 Peters, 476; Coxe *v.* Gulick, 1829, 5 Halst. N. J., 328, and it has been suggested by some courts that this is the only way in which it might be raised under the common law forms of pleading. But in Catlett & Keith *v.* Ins. Co., 1826, 1 Paine, C. C., 594, the court held it might properly be raised under the general issue. In State *v.* Cole, 1864, 17 Wis., 674, it was raised by exception and demurrer.

In Ackerman *v.* Haenck, 1893, 147 Ill., 514, the court refused to examine into the citizenship of one of the judges of an election in a contested election case. In Richards *v.* McDaniel, 1820, 2 Nott & McCord, 351, the question was raised on a motion for a new trial in an action of trespass. In Green's Son *v.* Salas, 1887, 31 Fed., 106, it was examined on a plea that went to the jurisdiction, and in In re Yamashita, 1902, 30 Wash., 235, an application for admission to the bar afforded opportunity for passing upon the matter of citizenship. In Banks *v.* Walker, 1848, 3 Barb. Ch., 438, the question was raised in a suit to foreclose a mortgage, the claimant alleging naturalization.

D. WHAT EVIDENCE WILL IMPEACH.

While the cases have held that naturalization may not be proved by parol, other cases have held that they may be disproved by parol. To this point McCarty *v.* Hodges, 1846, 2 Edm. Sel. Cas., 433; Richards *v.* McDaniels, 1820, 2 Nott & McCord, 351; although the courts have also held that they will not be disproved by a certificate of the clerk of the court to the effect that no record of naturalization exists or appears there. Beardstown *v.* Virginia, 1876, 81 Ill., 541. This, however, appears to be purely a matter of evidence.

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B. EFFECT OF LAPSE OF TIME ON INFORMAL PROCEEDINGS.

The case of In re McCarran, 1894, 8 Misc., 482, raised a very interesting point. It appeared there that the alleged invalid naturalization proceedings were had in 1866 and these were permitted to rest until 1894, when proceedings were brought by third parties to have the record declared invalid. The court asserted that such a length of time as this would defeat such an action as was brought, even for fraud. It should be noted in connection with this aspect of the case that not only were the proceedings brought by private parties, and so under the usual rule not maintainable, but also that they were not within the rule laid down in In re Yamashita, supra, as to proceedings void on their face.

SECTION 8.—*Effect of naturalization.*

Naturalization proceedings *instantly* confer upon the party citizenship in the United States (Wood *v.* Fitzgerald, 1870, 3 Oreg., 568, 583), and from that time a person naturalized ceases to be a foreigner within the view of our laws. Spratt *v.* Spratt, 1828, 1 Peters, 341, 348.[a] In pronouncing his opinion in the latter case, Chief Justice Marshall indicated the effect of naturalization in a general way with the following language:

> A naturalized person is, indeed, made a citizen under an act of Congress, but the act does not proceed to give, to regulate, or to prescribe his capacities. He becomes a member of the society, possessing all the rights of a native citizen and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual. The Constitution then takes him up and, among other rights, extends to him the capacity of suing in the courts of the United States precisely under the same circumstances under which a native might sue. He is distinguishable in nothing from a native citizen, except so far as the Constitution makes the distinction; the law makes none.

The general effect, therefore, of proceedings of naturalization is, as stated by Chief Justice Marshall, to put the naturalized alien in almost the exact position of a native-born citizen of the United States. Not only is the alien himself thus put in a new position, but his act may have an effect on others. As has been already seen, the naturalization of the parent may naturalize the child; the naturalization of the husband may naturalize the wife. This latter, however, was not the case until specially provided for by statute, and prior to the statute a number of interesting cases arose with reference to the wife's right of dower in lands acquired by her husband, she being still considered as an alien.

One of the earliest cases is Sutliffe *v.* Forgey, 1823, 1 Cowen, 89, affirmed in 5 Cowen, 715, in which at the time of the marriage both parties were aliens, the land in question being acquired by the husband after naturalization. The court stated (and it would seem correctly) that while at common law the wife in such a situation would be an alien and so not endowable, still under the statutes of

[a] The precise question involved, where this statement was made by Chief Justice Marshall, had to do with the meaning of a Maryland statute, but the principle seems sound aside from this.

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New York as then existing she did take her dower in the land. Under circumstances somewhat different, ten years later, in Mick *v.* Mick, 1833, 10 Wend., 379, the court denied dower to an alien widow of a natural-born citizen. In Priest *v.* Cummings, 1837, 16 Wend., 615, the latter case was distinguished from the first, and under the same conditions as in Mick *v.* Mick the wife was declared dowable; but this case was reversed on appeal, 1838, 20 Wend., 338, where the court also expressed the idea that citizenship was not retrospective. It is unnecessary for the purposes of this report to analyze the cases on dower.

The question raised by the last case, however, is of considerable importance. It would appear, as there indicated, that at common law the naturalization of a female alien acted retrospectively with reference to her dower rights, but this conclusion was denied in the case in question, under the authority of the New York statutes. As to whether or not naturalization has this effect has more frequently arisen, however, in connection with cases involving the descent of land and the holding of land by an alien purchaser after naturalization. One of the earlier cases in which the first question was discussed was that of People *v.* Conklin, 1841, 2 Hill (N. Y.), 67. It appeared there that lands were devised in 1779, subject to a life estate, which actually continued until 1832. The demandant was naturalized in 1828. The court held that under the circumstances here, entirely aside from the question of citizenship, the demandant could not, under the canons of descent, successfully defend his suit against the plaintiffs. However, the judge went further and discussed the matter as to whether or not his naturalization could be retrospective, and laid down, in a dictum, what seems to be the law on this subject:

> In answer to this objection we were referred to cases where it has been held that naturalization sometimes has a retroactive effect, and confirms a defective title previously vested in the alien. Those are cases where the alien had acquired lands by purchase, in which mode he may take, and was then naturalized before office found. But in this case the alien must claim by descent, and as he could not take lands in that way he had no estate or title to be confirmed by the naturalization. He took nothing on the death of his father; and naturalization, though it may confirm a defective title, will not confer an estate.

This language was subsequently quoted and relied upon in Heeney *v.* Trustees, etc., 1861, 33 Barb., 360, affirmed in 39 N. Y., 333, where at the time of the descent cast the party was an alien, though he was subsequently naturalized.

The second point has been raised and has also received consideration by the courts. In Jackson *v.* Beach, 1800, 1 Johns. Cases, 399, it appeared that an alien was the cestui in relation to certain lands which had been purchased and settled upon a trustee in his favor. Later he became naturalized, and the trustee then transferred the legal estate to him. It was insisted that this could not be done, but the court held that inasmuch as the alien could hold until office found, such naturalization confirmed the title which he had previously acquired. And this line of reasoning was followed in the case of Jackson *v.* Green, 1831, 7 Wend., 333.

The rights and duties which citizenship confers are not, as already suggested, within the purview of this report, and will not be further considered.

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CHAPTER II.—NATURALIZATION BY NATURALIZATION OF PARENT.

By the act of 1790 it was provided that "the children of such persons so naturalized, dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States." The act of 1795 reenacted this clause. The statute of 1802 provided "that the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States, under the laws thereof, being under the age of 21 years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States." This statute was in force down to 1878, and at that time was substantially incorporated into the Revised Statutes as section 2172. A statute in 1804 made a further provision for minor children to this effect:

> That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act [the sections relating to taking the declaratory oath], may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law.

The cases arising under these statutes may be classified in the following manner:

SECTION 1.—*Naturalization by naturalization of the father.*

A. WHERE NO DOUBT EXISTS AS TO THE FATHER'S NATURALIZATION.

It has been from the first clear, under these statutes, that a minor child was naturalized by the naturalization of the father. In the matter of Morrison, 1861, 22 How. Pr., 99; People *v.* McNally, 1880, 59 How. Pr., 500; State *v.* Mims, 1879, 26 Minn., 183; Prentice *v.* Miller, 1890, 82 Cal., 570; Dorsey *v.* Brigham, 1898, 177 Ill., 250; and see Haynes *v.* Ray, 1880, 54 Iowa, 109. It has also been decided that in order for the statute to operate in favor of the minor child the father must have taken out his final papers before the child became of age, Berry *v.* Hull, 1892, 6 N. Mex., 643, 660; or, which amounts to the same thing, that the mere fact that the father has made the declaratory oath (taken out his first papers) will be of no force or efficacy in naturalizing the minor child; In re Conway, 1863, 17 Wis., 526; In re Moses, 1897, 83 Fed., 995; and see Ex parte Overington, 1812, 6 Binn, 371; unless indeed the father dies after the taking of such oath and before final naturalization, in which case the children are by the terms of the statute made citizens by virtue of the father's act. Schrimpf *v.* Settegast, 1873, 38 Tex., 96.

However, while the decisions thus far stated are merely declaratory of the wording of the statute, a number of interesting questions have arisen for adjudication in the courts upon points not so well covered by the statute. One of the earliest cases is Campbell *v.* Gordon, 1809, 6 Cranch, 176, 183, in which it appeared that one William Currie, a British subject, emigrated to the United States, taking out his naturalization papers in 1795. At this time Currie had one daughter,

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who was born in Scotland, and who at the time of her father's naturalization was a resident there, she not coming to the United States until 1797. In passing upon the question of her citizenship, Washington, J., said:

> The next question to be decided is whether the naturalization of William Currie conferred upon his daughter the rights of a citizen, after her coming to and residing within the United States, she having been a resident in a foreign country at the time when her father was naturalized?
>
> Whatever difficulty might exist as to the construction of the third section of the act of the 29th of January, 1795, in relation to this point, it is conceived that the rights of citizenship were clearly conferred upon the female appellee by the fourth section of the act of the 14th of April, 1802. This act declares that the children of persons duly naturalized under any of the laws of the United States, being under the age of 21 years at the time of their parents being so naturalized, shall, if dwelling in the United States, be considered as citizens of the United States. This is precisely the case of Mrs. Gordon. Her father was duly naturalized, at which time she was an infant; but she came to the United States before the year 1802, and was at the time when this law passed dwelling within the United States.
>
> It is therefore the unanimous opinion of the court that at the time of the death of James Currie Mrs. Gordon was entitled to all the right and privilege of a citizen; and, therefore, that there is no error in the decree of the circuit court for the district of Virginia, which is to be affirmed with costs.

The effect of this decision is, of course, to hold that it is immaterial that the child be a resident of the United States at the time of naturalization, it being sufficient that the child become a resident during minority.

But no other case has gone the lengths on this point that were reached in Young *v.* Peck, 1839, 21 Wend., 389, affirmed on appeal, 1841, 26 Wend., 613. Here a father emigrated to America before the Revolutionary war, becoming at its close a citizen by virtue of the new allegiances created at that time. He left in Scotland, on emigration to this country a daughter who grew up, married, and remained in Scotland until after her husband died. She was born about 1770 and did not come to America until 1830. The court held that she was a citizen. The case is somewhat difficult to understand. On its appeal Chancellor Walworth stated the proposition of the case thus:

> The question then arises whether his infant daughter, who had been left by him in Scotland in 1774, and who was still an infant, not only at the time he became a citizen of this State, but also at the time of the treaty of peace in 1783, is entitled to the rights of citizenship here, either by this transfer of the allegiance of her father or by virtue of the fourth section of the naturalization act of April, 1802. The learned chief justice who delivered the opinion of the supreme court has put his decision in her favor upon the latter ground.

A reference to the statute given, supra, will show that on this point it is ambiguous. It provides that children shall be citizens upon the naturalization of their parents where they are "under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, if dwelling in the United States." Obviously, the question is left open whether this means whenever they are dwelling in the United States they shall be considered citizens, or they shall be considered citizens if dwelling in the United States at the time of naturalization. As understood by the chancellor, Nelson, C. J., had placed his decision in the lower court upon the ground that the statute meant that *whenever* the child came within the United States it should be considered a citizen. But in his own opinion, the chancellor abandoned this position, and, while

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affirming the holding of the court below, placed it rather upon the ground that the father became a citizen under the readjustment of allegiances at the end of the war and stood in a somewhat different position with reference to himself and his family from that in which naturalized citizens were placed.

The courts since then have not been entirely clear as to just which ground the case was decided upon in the upper court. Emott, J., in Ludlam *v.* Ludlam, 1860, 31 Barb., 486 at 491, s. c. affirmed on appeal 26 N. Y., 356, said:

> The case of Young *v.* Peck (21 Wend., 389; s. c., 26 id., 613) was decided in the supreme court upon the statute of 1802, and in the court of errors, either upon the same ground or upon the effect of the Declaration of Independence and the treaty of peace, upon persons domiciled and remaining here after the Revolutionary war.

The case was taken on a writ of error to the Supreme Court of the United States, where the appeal was dismissed without an opinion, owing to the parties reaching a compromise. See Peck *v.* Young, 1843, 1 How., 250.

One year before the chancellor was called upon to give his opinion in Young *v.* Peck a similar question had come before him in the case of West *v.* West, 1840, 8 Paige, ch., 433, in which it appeared that one West, a native Englishman, married a native subject of the same country, by whom he had three children, all born in England. By a second marriage, also to an English woman, he had four children, two of whom were born in England, and the other two in America after his emigration to this country in 1823. He was naturalized in 1830, at which time all his children were under 21 and were residing with him in New York. After his death the two American-born children appeared by their guardian and claimed the entire estate, on the ground that their brothers and sisters who were born in England were aliens and could not inherit from their father. The court decided that the act of 1802 "was intended to embrace the children of those who shall thereafter be, as well as those who had already been, duly naturalized under any of the laws of the United States. All the children of Thomas West, then, were citizens of the United States at the time of his death, and his real estate descended to them in equal proportion as tenants in common." The distinction between this case and the previous one is apparent, since in the latter the children were domiciled in America at the time of the father's naturalization.

In 1850 the question came before the supreme court of Arkansas in State *v.* Penny, 1850, 10 Ark., 621, where on a writ of quo warranto against the defendant as to why he held the office of sheriff, it was averred that "he was an alien and not a citizen of the United States at the time of his election to that office." It appeared that his father had emigrated to the United States in 1824 when the child was 11 years old; that his father had been duly naturalized and admitted to citizenship, at which time the defendant was under the age of 21 years and dwelling in the United States. The defendant relied on the naturalization of his father to prove his own citizenship. In sustaining this contention the court declared that the case of West *v.* West came fully up to the present case and sustained his judgment, that case "being an express adjudication of the chancellor of the State of New York, that, under the naturalization act of

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Congress of 1802, the infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, became such citizens by such naturalization."

A Florida court in O'Connor *v.* State, 1860, 9 Fla., 215, in passing upon the qualifications of a juror, who, it appeared, was born in Bavaria and had come to this country while an infant with his father, but who had never taken out naturalization papers himself, though his father had while he was still an infant, the court adopted the language of West *v.* West quoted above.

In the North Noonday Mining Co. *v.* Orient Mining Co., 1880, 6 Sawy., 299, Sawyer, circuit judge in charging the jury, used the following language in defining the rule of citizenship according to which the jury should determine whether or not a locator of a mining claim was a citizen:

> A person born in a foreign country, out of the jurisdiction of the United States, whose father is not a citizen of the United States, can only become a citizen by naturalization. The foreign-born son becomes a citizen by being himself naturalized, or by the naturalization of his father during the minority of the son.

In State *v.* Andriano, 1887, 92 Mo., 70, 76, the court decided that—

> The infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, became citizens by such naturalization, and that the provisions of that act on this subject are prospective, and intended to embrace the children of those who should thereafter be, as well as those who had already been, duly naturalized under any of the laws of the United States.

For this proposition the court cited State *v.* Penny, supra; O'Connor *v.* State, supra; West *v.* West, supra, and United States *v.* Kellar, infra. The court then considered Campbell v. Gordon, supra, but in connection rather with the question of the prospective effect of the statute of 1802 than as to the question of the residence of the child in the United States at the time of the naturalization of the parent.

It will thus be seen that there are two cases, Campbell *v.* Gordon, and Young *v.* Peck, in which the question arose as to whether or not children born abroad and resident there at the time of the naturalization of their parents in America became by that act citizens of the United States. Both cases are peculiar on their facts. In Campbell *v.* Gordon the daughter came to America while she was yet a minor and before the passage of the act by virtue of which she was afterwards declared a citizen. The effect of the judgment was that the statute applied retrospectively. It must be said, however, either that the court considered that the act was intended to cover all aliens whose parents had been naturalized or who had come to America up the date of the passage of the act or that residence in America, at the time of the parent's naturalization is not necessary. In Young *v.* Peck, as already indicated, the ground of the decision is not clear. Following the argument of the chancellor, it is to be rested upon the fact that the father's citizenship was due to the readjustment of allegiances at the end of the war, and that a citizenship so gained is *sui generis*. This conclusion, however, that there can be any different kinds of citizenship is not in accord with the determinations made in other cases, for in Crane *v.* Reeder, 1872, 25 Mich., 303, that precise question was up before the court. It appeared there that the

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citizenship of the parent of the person in question was acquired by his continued residence in the United States after the treaty of 1797, in which it was provided, as is usual in such treaties, that all British subjects remaining within the United States beyond a certain time should be deemed to have elected to become American citizens.

The court held that citizenship acquired in this manner was in no way different from that acquired in any other way. That citizenship was citizenship however obtained. With that point out of the case of Young *v.* Peck we are forced to the position that residence in the United States at the time of the naturalization of the parent, or, indeed, during minority, is unnecessary, and that whenever the child comes into this country he is to be treated as a citizen. In all the cases (cited above) subsequent to Young *v.* Peck, in which the courts used language to the effects that the minor children must be resident here at the time of the naturalization of the father, the fact was that the children had been so resident, and the statement of the court to that effect, therefore, was immaterial, a mere dictum.

This leaves us, therefore, with the following questions open for determination: First, must the child reside in America at the time of the father's naturalization, or is it sufficient that he come to America at any time before he reaches majority? and, secondly, is he to be considered a citizen before he acquires a residence in the United States, that is, does he become, as does the wife of one naturalizing himself in America, a citizen by virtue of such naturalization, irrespective of the place in which he lives?

Our courts have held, in accordance with the principle of our own statute, that where a native American citizen moved into British territory and there took the oath of allegiance to the sovereign of Great Britain, his son born after such oath was not a citizen of this country. Brown *v.* Dexter, 1884, 66 Cal., 39.

ILLEGITIMATE CHILDREN.

Two interesting cases have arisen in connection with the status of illegitimate children. In one case, Dale *v.* Irwin, 1875, 78 Ill., 170, the reputed father of the illegitimate child married the mother of the child, both parties being aliens, the husband (the reputed father) becoming afterwards naturalized. The court held that by virtue of the naturalization of his reputed father the illegitimate son became a citizen. (But see the discussion of this case under subdivision C infra.)

The second case is Guyer *v.* Smith, 1864, 22 Md., 239, in which the father of illegitimate children by an alien mother was an American citizen, the children being born abroad. The court declared such children were not citizens of the United States. For an interesting general discussion of the effect of adoption under such conditions, see Blythe *v.* Ayres, 1892, 96 Cal., 532.

A few cases have come before the courts in which it was impossible for the child to prove by the production of the record the naturalization of his father. In such cases, however, the court, considering that the naturalizing proceedings result in a judgment that the party be a citizen of the United States, have permitted that judgment to be proved as are the ordinary judgments of a court; and therefore, where the record of the judgment is not forthcoming, they allow it to be

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established in other ways Accordingly, in Sasportas *v.* De La Motta, 1858, 10 Rich. Eq., 38, a son was permitted to establish the citizenship of his father by showing that the father had exercised the privileges and had been generally reputed to be a citizen. The case of Boyd *v.* Nebraska, 1891, 143 U. S., 135, goes to the same point. And see Rexroth *v.* Schein, 1903, 206 Ill., 80, 83. In Trabing *v.* United States, 1897, 32 Court of Claims, 440, the court refused to consider a son a citizen on his showing certain facts tending in that direction, since it did not from his statement "appear that the father ever declared his intention to become a citizen; and it does not appear that he was naturalized; and it does not appear to the satisfaction of the court that he exercised the right of the franchise, for the statement of the claimant that he voted is manifestly hearsay. * * * It does not appear, as in Boyd's case, that the father had become a citizen and that the son also exercised of [sic] a citizen by voting."

The courts have applied the general principle that the naturalizing of the father naturalizes children to cases of expatriation from the United States. This is shown by the case of Brown *v.* Dexter, 1884, 66 Cal., 39, already referred to, in which a native American citizen took the oath of allegiance to Great Britain, after which he had a son born in his adopted country. The court held that such son was not a citizen of the United States.

At least one case has arisen under that part of the statute of 1802 which provided for the naturalizing of children born of those who, previous to the passing of any laws on the subject of naturalization by the Government of the United States, had become citizens of some of the States. In Vint *v.* Heirs of King, 1853, 2 Am. Law Reg. O. S., 712, it appeared that the father of the child in question had been naturalized according to the laws of Virginia in 1787. At that time he had two children then minors living in Ireland, who came to Virginia in 1792, residing there until after 1802. The court held such children citizens by virtue of the provisions already referred to. The court based the result on Campbell *v.* Gordon, supra. It does not appear whether or not at the time the act was passed the children were still minors.

SECTION 2.—*Naturalization by naturalization of the mother.*

As will be noted, the statutes refer always to *parents* without specifying either father or mother. Consequently, either is equally within the wording of the statute. The question as to whether or not the naturalizing of the mother naturalized the children arose as early as 1856 in Brown *v.* Shilling, 1856, 9 Md., 74, where the mother, a widow, was naturalized according to the general laws of naturalization. The court declared that such naturalizing conferred citizenship on her children. On the soundness of this decision there could seem to be no question.

The point has, in several cases, arisen, however, in another form, the question being whether or not the son of an alien woman by a former alien husband becomes an American citizen on the mariage of the mother to an American citizen, or to an alien who later becomes an American citizen. While it is not clear that in any of the cases cited the question was presented as to the effect of an alien woman marrying a native American citizen, the effect upon the citizenship

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of the son of the marriage of the mother to a naturalized citizen was passed upon in United States *v.* Kellar, 1882, 13 Fed., 82. The court in its opinion, said:

> The mother of the defendant having thus become a citizen by force alone of her marriage with a naturalized citizen in the year 1868, did not the defendant, being *then* a minor and dwelling in the United States, himself also become, *ipso facto*, a citizen? It seems to the court that this question must be answered in the affirmative.

In Gumm *v.* Hubbard, 1888, 97 Mo., 311, it appeared only that the stepfather of the child was a citizen, whether naturalized or native is not stated. See also in Kreitz *v.* Behrensmeyer, 1888, 125 Ill., 141, 197, 198. In People *v.* Newell, 1885, 38 Hun., 78, the same result was reached, although in that case the alien mother married an alien who later became naturalized. Some question, it would seem, might be raised as to whether or not the child becomes a citizen by virtue of the naturalization of his mother, or because of the naturalization of his stepfather. In Dale *v.* Irwin, 78 Ill., 170, 185 (in which case as indicated above, the question was as to the naturalization of the illegitimate child by the marriage of his reputed father with his mother and the later naturalization of the reputed father), the court commented upon the facts as follows:

> His case (the son's) is a peculiar one, and though he may be illegitimate, he came to this country as a member of John Ruckle's family, whose wife was his mother and who was naturalized whilst Henry was an infant. John Ruckle is his reputed father, and the husband of his mother. We are inclined to hold, as he was a member of his reputed father's family when his father was naturalized, and he an infant, that, by virtue of the act of Congress, he became naturalized.

In Kreitz *v.* Behrensmeyer, supra, the same court used the following language: "And the children of such a woman (when naturalized by marrying a citizen), under the age of twenty-one years, become citizens, by virtue of her citizenship." The doubt has been resolved in accordance with United States *v.* Kellar, supra, and the occasional dicta by United States *v.* Rodgers, 1906, 144 Fed. Rep., 711, in which the court held squarely that a minor residing in this country with his mother and stepfather when the latter was naturalized likewise became a citizen.

The question is, perhaps, of little practical importance.

CHAPTER III.—NATURALIZATION BY VIRTUE OF THE MARRIAGE RELATIONSHIP.

This question came before Congress as early as 1804, with the result that that body passed an act providing "that when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die before he is actually naturalized, the widow and children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law." This, of course, did not confer citizenship on an alien woman who married an American citizen, naturalized or native, and a number of cases having arisen involving this point, as will be seen from those cited below, Congress in 1855 made fur-

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ther provisions as follows: "That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citien of the United States, shall be deemed and taken to be a citizen."*.

This statute remains practically unchanged at the present time.

The cases under these statutes may be classified in accordance with the following arrangement:

SECTION 1.—*Naturalization by naturalization of the husband.*

A. WHERE THE WIFE IS A RESIDENT.

A number of cases arose under the acts of 1802 and 1804, usually in connection with the right of the wife to take dower. The general effect of these acts was well expressed by Chief Justice Simpson in White *v.* White, 1859, 2 Met. (Ky.), 185, 191, when he said:

> Naturalization is a personal privilege, and the alien wife does not become a naturalized citizen by the naturalization of the husband. The acts of Congress do not impart to it that effect, nor are we apprised of any law which, at the time of the decedent's death, conferred upon his wife the right to take real estate by descent, in consequence of his naturalization, although such a right has been since conferred upon an alien wife whose husband is a citizen of the United States by the Revised Statutes.

One of the earliest cases on the subject is that of Sutliff *v.* Forgey, 1823, 1 Cowen, 89, affirmed in 5 Cowen, 713, in which it appeared that the husband and wife, alien born, came to America in 1786 with intent to become citizens, and resided here until his death, in 1820. The husband was naturalized in 1803. The widow was never naturalized. The court held that she was not entitled to dower, which seems to require the conclusion that she was not a citizen. The New York court again had occasion to pass upon a similar question in Connolly *v.* Smith, 1839, 21 Wend., 59, the question again being as to the right of "an alien widow of a citizen to her dower." In the course of its opinion the court, by Cowen, J., said:

> We do not deny her right because her husband was incapable of taking; but the wife must acquire a capacity of her own. It never has been supposed since Sutliff *v.* Forgey that her capacity followed that of her husband.

Two interesting cases, however, have arisen in Kentucky. In the earlier, Alsberry *v.* Hawkins, 1830, 9 Dana, 177, in which the husband, once a citizen of Kentucky, emigrated in 1824 to the "Province of Texas," where he died in 1826, the wife continuing to reside there until the summer of 1836, when she returned to Kentucky on a visit to her daughter, but with the intent to go back to Texas as her home. She sought to recover dower interest in land sold by her husband to the defendant before they left Kentucky for Texas. In declaring that the wife was not entitled to dower the court used the following language:

> According to the principle recognized in the case of Shanks et al. *v.* Dupont et al., 3 Peters, 248, if her husband had become an alien before his death she

* This statute seems based directly on the English statute, seventh and eighth Vict., chap. 66, sec. 16, which provided:

"*And be it enacted*, That any woman married, or who shall be married to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject."

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was then an alien also in a *political* point of view, and though, being *sub protestati viri*, her removal with her husband, and his expatriation, might not necessarily conclude her as to her *civil* rights, yet these facts should, in our opinion, be so far *prima facie* evidence against her, as to her own alienage, as to impose on her the burden of repellant proof, which she has not attempted to make in this case.

The court then discussed the general proposition of the right and effect of expatriation, and it is not improbable that the determining fact in the mind of the judge was rather the act of expatriation by the wife herself than of the effect of the naturalization of her husband in Texas.

The question was up before the same court in Moore *v.* Tisdale, 1845, 5 B. Mon., 352, where facts substantially those of Alsberry *v.* Hawkins were before the court, save that the wife upon the death of her husband returned to Kentucky. The court had before it the case of Alsberry *v.* Hawkins, and seemed to regard that case as being placed upon the ground of the expatriation of the wife herself, for in this case the court declared that inasmuch as the wife had returned to the United States soon after the death of her husband "it should be deemed that she had merely submitted herself temporarily, and as a wife, to the dominion of Texas, without having renounced her native allegiance; that she, therefore, never has been an alien, and that her rights of property remain as if instead of having been a temporary resident of Texas she had during her absence from Kentucky been a resident of one of the other States of the Union. She can not, therefore, be debarred of her dower on the ground of having been an alien at the death of her husband." This case is in line with the New York cases.

Courts since the act of 1855 have, of course, reached directly the opposite result. One of the first cases that arose under the new statute was Kelly *v.* Owen, 1868, 7 Wall., 496, in which, commenting upon the provisions of the act, the court said:

It confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide.

And the cases have uniformly taken this position. Kane *v.* McCarthy, 1869, 63 N. C., 299; Renner *v.* Muller, 1879, 57 How. Pr., 229; People *v.* Newell, 1885, 38 Hun, 78; Kreitz *v.* Behrensmeyer, 1888, 126 Ill., 141. In Dorsey *v.* Brigham, 1898, 177 Ill., 350, it was sought to be established that the mere taking of the declaratory oath on the part of the husband would confer citizenship on the wife, the husband being still alive, but the court held that such was not the law.

As was indicated by the comment in Kelly *v.* Owen, supra, and as expressly provided in the statute itself, in order that the wife may be naturalized by the naturalization of her husband, it is necessary that she be one of those classes of persons who might herself be naturalized under the provisions of Congress. In Leonard *v.* Grant, 1880, 5 Fed., 11, 17, s. c. 6 Sawy., 603, the court, in declaring that an alien woman, a native and citizen of Switzerland, had become an American citizen by virtue of her marriage to a citizen, said:

To entitle the plaintiff to become naturalized at the time she was married to Leonard, on June 19, 1875, she should have been, *first*, a free white person, or a person of African descent or nativity; *second*, she must have resided within the United States five years; *third*, she must have been of good moral

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character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and, *fourth*, she must have renounced all titles or orders of nobility, if any she had.[a]

In Leonard *v.* Grant the question which was argued by counsel for the plaintiff was that it was "not to be presumed that Congress would naturalize an alien woman absolutely without her consent, and therefore the act should be construed as only intended, as a matter of convenience, to give her the *status* of a citizen during her marriage to a citizen. But," says the court, "the answer to this argument is found in the fact that an alien woman who marries a citizen of the United States must be presumed to assent to the obligations, duties, and *status* which the law provides shall be consequent upon the act of entering into such relation.

"No law expressly providing for a temporary or contingent citizenship is known to the legislation of the United States, and so unusual and singular a purpose ought not to be attributed to Congress without an explicit provision to that effect. The language of the statute in question, taken in its most natural and apparent sense, conferred citizenship upon the plaintiff on her marriage with Leonard, and there is nothing in it, or the nature or circumstances of the case to warrant the conclusion that Congress thereby only intended to confer upon her a qualified citizenship—a citizenship during marriage.

"The phrase, 'shall be deemed a citizen,' in section 1994, Rev. Stat., or as it was in the act of 1855, supra, 'shall be deemed and taken to be a citizen,' while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen. The word 'deemed' is the equivalent of 'considered' or 'adjudged;' and, therefore, whatever an act of Congress requires to be 'deemed' or 'taken' as true of any person or thing, must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have force and effect accordingly. When, therefore, Congress declares that an alien woman shall, under certain circumstances, be 'deemed' an American citizen, the effect, when the contingency occurs, is equivalent to her being naturalized directly by an act of Congress, or in the usual mode thereby prescribed."

B. WHEN WIFE A NONRESIDENT.

As early as 1800 the point was presented for adjudication in a New York court as to the status of the wife of a British subject, the husband having come to New York before the Revolutionary war, where he lived until he died in 1798, his wife, whom he married before he came to America, having always remained a resident of Great Britain. The court held that such wife was dowable only in such lands as her husband owned before the outbreak of the Revolution.

[a] In this connection, it is of interest to note Hatch *v.* Ferguson, 1893, 57 Fed., 959, in which case the husband had married an Indian woman. The Indian wife was declared to be a citizen, though, as already pointed out, this conclusion might have been reached, aside from the question of her marriage to an American citizen under the Dawes Act of 1888, which provided that Indians forsaking their tribal relationship should become citizens.

And see Renner *v.* Muller, supra.

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(Kelly *v.* Harrison, 1800, 2 Johns, case 29.) The same court had a similar question before it in 1858 in Greer *v.* Sankston, 1858, 26 How. Pr., 473. One Sankston, an alien who, in 1829, had married an Irish woman, both being citizens of Ireland, came to this country in 1831, where he resided until his death in 1854. He was naturalized in 1836 and purchased property in 1843, in which it was now sought to establish the widow's right of dower. While an interpretation of some local statutes was involved the case went to the point that the widow had no right of dower, being an alien. Subsequently, in 1864, the same court was again called upon to pass upon the right of the wife of an alien, the marriage having been in a foreign country before the husband came to America, where he was duly naturalized. In this case the widow, after the death of her husband, came to the United States, but in all other points the case seems identical with the two cases above. The court collected and reviewed the earlier cases, and also the local and national legislation on the question. In commenting upon the act of 1855 the court said:

> The act of 1855, therefore, as we glean from this previous legislation, though unfinished, the history of the legislative object to be attained by it, and as well the general considerations which influence nations in framing naturalization laws, was designed, certainly, for the benefit of an alien white woman, whether resident or not, married to a person who was at the time of the marriage a citizen of the United States, thus securing, by the same law, the rights of citizenship to the children of American citizens born abroad, and to such alien wife all legal rights of citizenship, which otherwise, and by reason of her alienism, she might not possess. * * * Construed with liberality, however, it might be held also to extend to an alien woman resident in this country, though married abroad to an alien, and who came to this country with him or followed him here, and in that way, or in one of these ways, identified herself with the country of his adoption. * * * In this case the plaintiff has neither sought to derive the benefit of her husband's naturalization by coming with or following him here nor entitled herself to the benefit of a liberal construction in her favor of the act, as suggested by a residence in this country of any duration prior to her husband's death. Her rights, therefore, as a citizen depend entirely upon the construction of the section of the statute under consideration, and I am of the opinion that she has no claim upon her husband's estate thereunder. He was not, when he married her, a citizen of the United States, and she was never a resident thereof during his life. On the contrary, she was, and continued to be, both alien and stranger.
>
> The plaintiff being an alien, and having married an alien, and not having resided in this country prior to her husband's death, has no dower right in the lands of which her husband died seized under the provisions of the act of the legislature passed in 1845. Burton *v.* Burton, 1864, 26 How. Pr., 474, 478.

An interesting state of facts was presented in the case of Kircher *v.* Murray, 1893, 54 Fed., 617, where it appeared that the husband, a citizen of the United States, emigrated to Texas during its revolution and became a citizen of the State of Texas by reason of a statute with the terms of which he complied. The court held that his wife became a citizen of Texas, although she remained during the entire time in Illinois.

SECTION 2.—*Naturalization by marriage to a citizen.*

A. AN ALIEN WOMAN MARRIES AN AMERICAN CITIZEN.

The general scope of the act of 1855 is well set forth in the case of Kelly *v.* Owen, 1868, 7 Wall., 496, 498, where it was to be decided whether or not women who marry aliens who become American citi-

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zens by naturalization after the marriage are thereby themselves made citizens. In declaring that they were, the court said:

As we construe this act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide. The terms "married" or "who shall be married" do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that, whenever a woman, who under previous acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage, she becomes by that fact a citizen also. His citizenship, whenever it exists, confers, under the act, citizenship upon her. The construction which would restrict the act to women whose husbands at the time of marriage are citizens would exclude far the greater number for whose benefit, as we think, the act was intended. Its object, in our opinion, was to allow her citizenship to follow that of her husband without the necessity of any application for naturalization on her part; and, if this was the object, there is no reason for the restriction suggested.

And see, in accord, Luhrs *v.* Eimer, 1880, 80 N. Y., 171. In the later case of Kane *v.* McCarthy, 1869, 63 N. C., 299, 304, the same result was reached, where the court said:

It is not the ceremony of marriage, or its time or place, but it is the fact of being "married to"—that is, being the wife of—a citizen that makes the wife a citizen—that makes the woman a citizen. The circumstance that her husband was not a citizen at the time of marriage is wholly immaterial, for he became a citizen afterwards ipso facto. So she, being a free white woman married to a citizen, comes within the description and the very words of the act of Congress, "and is deemed and taken to be a citizen;" for it is the status of being married to—being the wife of a citizen—that makes her one. It can in no possible view make any difference whether the marriage ceremony is performed first, and then the husband becomes a citizen, or whether he becomes a citizen first, and the marriage afterwards takes place. Whenever the two events concur and come together, "she is a woman married to a citizen." The thing seems to us too plain to admit of discussion; it is like trying to prove that two added to two makes four.

In Mick *v.* Mick, 1833, 10 Wend., 379, and Priest *v.* Cummings, 1837, 16 Wend., 617, the widow of a native-born citizen, she herself having been born an alien and never having been naturalized according to the general laws, applied for dower in the estate of her deceased husband. In refusing the right of dower the court characterized the wife as an "*alien widow* of *a natural born citizen.*" In Currin *v.* Finn, 1846, 3 Denio, 229, the question of the right of such wife to dower interest in her husband's estate was again presented, and while it does not appear whether or not the husband was a native-born or naturalized citizen, the court, following the earlier cases of Sutliff *v.* Forgey, supra; Mick *v.* Mick, supra; Connolly *v.* Smith, supra; Priest *v.* Cummings, supra; Kelly *v.* Harrison, supra; and Davis *v.* Darrow, 1834, 12 Wend., 65, reached the same result.

The cases collected below have all arisen under the statute of 1855, which have uniformly recognized the principle that an alien woman by marrying an American citizen becomes thereby herself a citizen. See Knickerbocker Life Insurance Co. *v.* Gorbach, 1871, 70 Pa. St., 150; United States *v.* Kellar, 1882, 13 Fed., 82; s. c. 6 Sawy., 603; Kane *v.* McCarthy, 1869, 63 N. C., 299; Kreitz *v.* Behrensmeyer, 1888, 125 Ill., 141; People *v.* Newell, 1885, 38 Hun, 78; Gumm *v.* Hubbard, 1888, 97 Mo., 341. The act has been held to apply to negroes since the fourteenth amendment; Broadis *v.* Broadis, 1898, 86 Fed., 951, in which the wife had been, before marriage, a British

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subject. It has also been applied to an interesting state of facts in the case of Ware *v.* Wisner, 1883, 50 Fed., 310, in which the citizen husband was a citizen by virtue of his having been born of American parents abroad. The court declared that the alien-born wives of such foreign-born American citizens were citizens. It is immaterial, it would seem from this case, that the parties at the time of the marriage are not residing within the jurisdiction of the United States; and this is further borne out by the case of Halsey *v.* Beer, 1889, 52 Hun, 366, in which a naturalized American returned to England, the home of his nativity, and there married an English subject, the two remaining in that country. The court held that by the marriage the wife became a citizen.[a]

B. A NATIVE CITIZEN (WOMAN) MARRIES A FOREIGN CITIZEN.

(a) A NONRESIDENT FOREIGNER.

But one case has been found in which the citizenship of a native American citizen (woman) who has married a resident alien has been called in question, and that is the case of Comitis *v.* Parkerson, 1893, 56 Fed., 556. In this case it appears that the plaintiff had intermarried with one Loretto Comitis, a native-born subject of the King of Italy, who resided in New Orleans, where he established a business, intending to make America his permanent home. After his death his wife continued to reside in Louisiana with at no time the purpose of removing to Italy. The court said:

> The question may be generalized thus: Does a woman who was a citizen of the United States, who never intended to leave it, and never did leave it, become expatriated and become an alien by marriage with a man who had been a subject of Italy, but who, previous to his marriage, had settled in Louisiana, and had forever severed himself from Italy?

The court, disapproving the earlier case of Pequignot *v.* Detroit, infra (though calling attention to certain distinguishing facts of that case), held that the plaintiff in this case did not lose her citizenship by reason of marriage to an alien resident.

(b) A NONRESIDENT FOREIGNER.

In Shanks *v.* Dupont, 1830, 3 Peters, 242, the facts were that a woman born in South Carolina before the Revolution lived there until after she became of age and later married a British officer during the British occupation of Charleston; on the evacuation of Charleston by the British, she returned with the officer to England and lived in England until her death. The court held that her marriage had no effect upon her allegiance, "because marriage with an alien, whether a friend or an enemy, produces no dissolution of the native allegiance of the wife. It may change her civil rights, but it does not affect her political rights or privileges. The general doctrine is that no person can, by any act of their own, without the consent of the Government, put off their allegiance and become aliens. If it

[a] For the effect of the marriage of an American citizen to Indians, consult the section on Indians, Part I, chap. 1; and the following cases may be particularly mentioned: Davis *v.* Hall, 1818, 1 Nott & McCord, 292; Pennock *v.* Commissioners, 1880, 103 U. S., 44; Hatch *v.* Ferguson, 1898, 57 Fed., 959.

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were otherwise, then a feme alien would, by her marriage, become ipso facto a citizen, and would be dowable of the estate of her husband, which is clearly contrary to law. (See Kelley *v.* Harrison, 2 Johns. Cas., 29; Co. Litt., 31 b; Com. Dig. Alien, C, 1; Dower, A, 2; Bac. Abr. Alien, Dower, A.) Our conclusion therefore is that neither of these acts warrant the court in saying that Ann Shanks had ceased to be a citizen of South Carolina at the death of her father." The court further held that the removal of the wife with her husband to England operated as a virtual dissolution of her allegiance to South Carolina and fixed her future allegiance to the British Crown by the treaty of peace of 1783, which provided in effect that those who removed from the colonies into British territory should be presumed to retain their status as British subjects.

The same point had arisen, indeed, in two earlier cases, Sewell *v.* Lee, 1812, 9 Mass., 363, and Barzizas *v*, Hopkins, 1824, 2 Randolph, 276.

In the first the husband, a British subject, withdrew from this country at the time of the Revolution, taking with him his wife, who, after his death, did not return to the United States, except on a visit. In this case, however, the court refused to decide her alienage, inasmuch as the defendant had by his plea admitted her ability to sue.

In Barzizas *v.* Hopkins, it will be recalled (see case as discussed above), the question was raised and the court expressed an opinion (dictum) on the matter, but the question could not have been up for decision under the facts. In Trimbles *v.* Harrison, 1840, 1 B. Mon., 140, the matter received consideration, and while the principle was recognized that a woman by marriage to a nonresident foreigner might lose her American citizenship, the conclusion seems to have been reached on the supposition that some act of expatriation would be necessary.

In Beck *v.* McGillis, 1850, 9 Barb., 35, the facts were that a native-born American citizen, resident at the time in Montreal, intermarried with one McGillis, "who then was and has ever since remained and now is an alien from the Government of the United States and a subject of the Queen of the United Kingdom of Great Britain and Ireland." Of this marriage there were a number of children. In passing upon the rights of Mrs. McGillis and the children to take under a will, the the court said:

> As to the capacity of McGillis and wife and their children to take under the will. Mrs. McGillis was born a citizen of the United States. While yet a minor she intermarried with a subject of Great Britain, but neither her marriage nor her residence in a foreign country constitutes her an alien. Whether, indeed, a citizen can, by any mere act of his own, dissolve his native allegiance and become an alien, is not definitively settled in this country. The question has been regarded as one of much difficulty as well as delicacy, and though frequently discussed before the Supreme Court of the United States, it has never, I believe, been regarded as the leading point in the case presented, so as to call for the judgment of the court. But it has been decided by that court that the marriage of a feme sole with an alien husband does not produce a dissolution of her native allegiance. (Citing Shanks *v.* Dupont, supra.)

The results reached by these courts would seem entirely sound under the views they have taken with reference to the rights of aliens marrying an American citizen prior to the statute of 1855.

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The same question has been before the Federal courts in two fairly recent cases since the statute of 1855. In the earlier case, Jennes *v.* Landes, 1897, 84 Fed., 13, the question really was as to whether or not by marriage to an alien foreigner the wife acquired the status of her husband. Evidence had been introduced to show that a Canadian statute provided for such a contingency, but the court declined to recognize in Canada the right to legislate on the subject of British allegiance. It was remarked, however, that if she should plead the statute of seventh and eighth Vict., chap. 66, that the court would be forced to regard her as a British subject.

The last case in which the question seems to have been up is Ruckgaber *v.* Moore, 1900, 104 Fed., 947, where the court declared that a woman marrying an alien becomes a foreign citizen, provided there "be that withdrawal from her native country or equivalent act expressive of her election to renounce her former citizenship as a consequence of her marriage."

C. A NATURALIZED AMERICAN CITIZEN (WOMAN) MARRIES A FOREIGN CITIZEN.

The leading case on this point is Pequignot *v.* Detroit, 1883, 16 Fed., 211, where it appeared that a woman born in France of French parents emigrated to America with her parents when she was 6 or 7 years old. The parents were never naturalized. She herself married in 1863 one Partridge, who was a native born American citizen, and of course under the statute of 1855 became thereby an American citizen. After living with Partridge for some fourteen years she was divorced and shortly afterwards married Augustine Pequignot, "who was himself born in France in 1835, and has never become an American citizen, or even declared his intention to do so. The plaintiff is still living in this State with him as his wife." On this state of facts the court held that she was an alien and incompetent to sue as such in the Federal court. As already noted, this case was before the court in Comitis *v.* Parkerson, and while disapproving of the holding of the case, the court there called attention to the following distinction between the cases:

> In that case (Pequignot *v.* Detroit) the facts characterizing the residence of the husband and wife may have made it what the public writers term "temporary residence," whereas the intent of the plaintiff and her husband was to remain in the United States always.

The question thus seems to be reduced to one either of domicile after marriage, or to a question of expatriation. In Kreitz *v.* Behrensmeyer, the court made use of the following language:

> The citizenship of a woman thus acquired (by marriage with a citizen husband) is not lost by the subsequent death of her husband, and her afterwards intermarrying with an alien.

If the courts take the position announced in Comitis *v.* Parkerson, and also follow the holdings in such cases as Ware *v.* Wisner, supra; Halsey *v.* Beer, supra (to the effect that an alien woman nonresident marrying a nonresident American citizen becomes thereby an American citizen), and if foreign countries assume the same position, we shall have in every case of naturalization by marriage, for which naturalization the statutes of England, France, Germany, and America provide, a case of dual allegiance, because under the rule

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announced in Halsey *v.* Beer the King of Italy might insist that the native-born citizen wife of Augustine Comitis became a subject, by that marriage, of Italy, and it must be deemed immaterial, under the decision of Halsey *v.* Beer, that the husband in the Comitis case was a permanent resident of America. From the standpoint of comity and the avoidance of conditions of dual allegiance the decision in Pequignot *v.* Detroit seems the sounder.

CHAPTER IV.—NATURALIZATION BY ADMISSION OF A NEW STATE INTO THE UNION.

SECTION 1.—*Admission of a Territory as a State.*

In the admission of new Territories as States, Congress has usually undertaken to declare who of the inhabitants of the State shall be deemed citizens. In some cases, as will be seen later (see Chapter VI), inhabitants have already been citizens of the United States before the admission of the Territory as a State. This is perhaps usually true of the Western States, which have been colonized more or less completely by citizens of the older States. In some instances, however, the inhabitants of the Territory have not been citizens of the United States. This was the case in the territory of Orleans, the inhabitants of which before the admission of the Territory as a State were deemed citizens of the Territory. It has been determined that these citizens became citizens of the United States by virtue of the admission of that Territory to the Union as the State of Louisiana, and those have been declared to be citizens of the Territory who were resident in it and who exercised certain political and civil rights. The court reached the conclusion that one who had exercised such rights and had such residence became, by the admission of the State into the Union, a citizen of the United States. The following is the line of argument adopted:

> By the third section of the fourth article of the Constitution of the United States, it is provided that "new States may be admitted by the Congress into the Union," and the second section of the same article directs that "the citizens of each State shall be entitled *to all the privileges and immunities of citizens in the several States.*" It is impossible to give to the provisions of these two sections their effect, in the opinion of the counsel for the motion, without recognizing, as a constitutional principle, the position that, on the admission of a new State into the Union, its citizens, the members who compose it, become ipso facto entitled to all privileges and immunities of citizens in the several States, consequently to those of citizens of the United States. (Desbois' Case, 1812, 2 Martin, 185.)

This case was followed and approved in United States *v.* Laverty, 1813, 3 Martin, 736, which was in turn approved and the doctrine recognized in Dred Scott *v.* Sanford, 1856, 19 How., 393, 525. The principle announced in the case was limited in State *v.* Primrose, 1842, 3 Ala., 546, so as to include only those who were inhabitants of the territory of Orleans at the time of the treaty. This limitation would have changed the decision in Desboi's case. However, it would seem that it is not necessary that the individual should be a "citizen of the admitted territory if the act admitting the State and the State constitution provide for the citizenship of 'inhabitants' of the State." Under such a provision those may become citizens who are neither native born nor naturalized, providing they were residents at the

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date specified—Attorney-General *v.* Detroit, 1889, 78 Mich., 545, 563. Moreover, it is clear, as suggested above, that inhabitants of territories may be citizens of the United States before the admission of the territory as a State, and that, too, where the party is not a settler from one of the older States who has carried his citizenship with him.

The treaty of 1819, by which we acquired Florida, provided for the citizenship at the time the territory was transferred of all its inhabitants. Other territories have been admitted under provisions which have been declared to make valid incomplete naturalization on the part of inhabitants. For example, where the inhabitant has taken out his first papers, it has been held that the fact that he neglected to take out his second papers had no effect upon his citizenship. See Boyd *v.* Nebraska, 1892, 143 U. S., 135; Bollin *v.* Nebraska, 1900, 176 U. S., 73, 88; Bahuaud *v.* Bize, 1901, 105 Fed., 485.

SECTION 2.—*Admission of sovereign States.*

The status of those who were inhabitants of the original States was set forth in Minor *v.* Happersett, 1874, 21 Wall., 162, 167.

> Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted became ipso facto a citizen—a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt.

It would seem wholly logical therefore to say that whenever a sovereign State is admitted into the Union its citizens must become citizens of the United States, since such States are admitted on an absolute equality with the original States. This has been the effect of the decisions.

In 1853 the supreme court of Texas, in the case of Cryer *v.* Andrews, 1853, 11 Tex., 171, 183, the court used the following language:

> When the Congress of the United States, under the authority to admit new States, receives a foreign nation into the confederacy, the laws of these respective nations, in relation to the naturalization of individual immigrants, have no application to the respective citizens of each. By the very act of union, the citizens of each become citizens of the government or governments formed by this union. The position which has been sometimes broached, that the citizens of Texas must submit to the laws of naturalization before they can become citizens of the United States, is quite preposterous. No such doctrine was ever admitted or applied to the citizens or inhabitants of Louisiana or Florida—countries acquired by purchase. (2 Mart., 158; 8 Mart., 733.) Much less is it applicable to the citizens of a State which, by voluntary treaty or legislation, becomes incorporated into the United States.

And the same court a few years later said:

> But when the annexation to the United States took place in 1845 we became a part and parcel of the United States, and none of the citizens of the United States were aliens to Texas, and the citizens of Texas would be in their own country from the St. Lawrence to the Gulf of Mexico. (Barrett *v.* Kelly, 1868, 31 Tex., 476, 480).

In McKinney *v.* Saviego, 1855, 18 How., 235, the Supreme Court declared that to be a citizen of the United States by virtue of the admission of Texas one must have been a citizen of the State when it was admitted, and since the constitution of Texas provided that only those who were resident in Texas at the date of the declaration of independence should be citizens, one who left the State before the

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declaration of independence was not a citizen of the State and so not a citizen of the United States. The same question has been up quite recently in the Supreme Court, and the question as to citizenship was disposed of by Chief Justice Fuller in the following language:

> But it is contended that by his stay in Texas of less than six months Contzen became one of the people of Texas; that the people were admitted into the Union, and that all who were competent thereupon became citizens of the United States. In other words, that the effect of the proceedings through which annexation and admission were accomplished was not simply to collectively make citizens of the United States of all the then citizens of Texas, but to collectively naturalize all who might have been naturalized in Texas, but had not been, and had in no way signified their election to become citizens of the United States. And that this included alien minors independently of their parents.
>
> We can not concur in this view, and do not think such was the intention of Congress or of the people applying for admission.
>
> Texas occupied toward the United States the position of an independent sovereignty. Its citizens were determined by its laws, and they prescribed the manner in which aliens might become citizens.
>
> The United States admitted Texas as one of the States of the Union with its population as it stood. Those who were citizens of the State became citizens of the United States, while aliens were relegated for naturalization to the laws of the United States upon that subject. (Contzen *v.* United States, 1900, 179 U. S., 191; S. C. below, 1898, 33 Court of Claims, 475.)

Chapter V.—Collective naturalization.

It is apparent that naturalization by the admission of a territory as a State, or of a sovereign State as a State of the Union, as well as naturalization by treaty, are instances of collective naturalization. The cases treated under those headings will, therefore, usually be in point upon the present question, and some of the best instances of collective naturalization by treaty are those under which Indian tribes have been naturalized.

One case, however, which may not be classed with any of the others, is that of Kircher *v.* Murray, 1893, 54 Fed., 547, in which it appeared that in the "declaration of the people of Texas, in general convention assembled," adopted November 7, 1835, it was provided that Texas would "reward, by donations of land, all who volunteered their services in the present struggle and receive them as citizens." Under the promise of this declaration, a citizen of Illinois emigrated to Texas and served in their army as a surgeon. It was held that he became a citizen of the State of Texas.

Chapter VI.—Naturalization by treaty.

The question of naturalization by treaty may be passed over without any considerable comment. The general principles controlling such cases are entirely clear and have been understood and acted upon by the Government from the first.

In Tobin *v.* Walkinshaw, 1856, 1 McAll., 186, 192, McAllister, J., made as succinct a statement of these principles as, perhaps, is to be found in the cases. He said:

> By a principle of international law, on a transfer of territory by one nation to another, the relations of the inhabitants toward each other undergo no change; but their relations with their former sovereign are dissolved and new ones between them and the government which has acquired their territory are

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created. The same act which transferred their territory transfers the allegiance of those who remain in it, and the law which may be denominated political is changed. American Insurance Co. *v.* Canter (1 Peters, 542). This right to change the political relations of the inhabitants of a ceded territory arises out of the character of those relations as recognized by the law of nature and nations. Birth binds man by the tie of natural allegiance to his native soil, and such allegiance gives, by the principles of universal law, to the country in which he was born, rights unknown to mere voluntary or statutory allegiance. Upon the right to transfer this natural allegiance has been ingrafted this right of election in the party whether he will retain his allegiance to his old sovereign or pay allegiance to the new.

Marshall, C. J., in the American Insurance Company case (referred to by Judge McAllister) expressed the principle in this language:

The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose. On such transfer of territory it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state.

The question as to the status of peoples residing in territory ceded to us has arisen in connection with almost every treaty that we have made. The more important ones are collected below:

For decisions under the treaty with England of 1783 on questions of citizenship see Davis *v.* Darrow, 1834, 12 Wend., 54; Moore *v.* Wilson, 1837, 10 Yerg., 406; Young *v.* Peck, 1841, 26 Wend., 613; Calais *v.* Marshfield, 1849, 30 Me., 511; Inglis *v.* Sailors' Snug Harbor, 1830, 3 Pet., 99. Under the treaty of 1794 with England: Trimbles *v.* Harrison, 1840, 1 B. Mon., 140; Crane *v.* Reeder, 1872, 25 Mich., 303. Under the treaty of 1803 with France: Desbois' Case, 1812, 2 Mart., 185; United States *v.* Laverty, 1813, 3 Mart., 736; In re Harold, 1840, 1 Clark (Pa. L. J.), 214; State *v.* Primrose, 1843, 3 Ala., 546. Under the treaty of 1819 with Spain: American Insurance Co. *v.* Canter, 1828, 1 Pet., 511; Tannis *v.* Saint Cyre, 1852, 21 Ala., 449. Under the treaty of 1848 with Mexico: United States *v.* Lucero, 1869, 1 N. Mex., 422; United States *v.* Santistevan, 1847, id., 583; In re Rodriguez, 1897, 81 Fed., 337; Quintano *v.* Tompkins, 1853, 1 N. Mex., 29; Carter *v.* Territory, 1859, id., 317; McKinney *v.* Saviego, 1855, 18 How., 235; Tobin *v.* Walkinshaw, 1856, 1 McAll., 186; People *v.* De La Guerra, 1870, 40 Cal., 311; and see Murphy *v.* Ramsey, 1884, 114 U. S., 15, 44. Under the treaty of 1867 with Russia: Rasmussen *v.* United States, 1904, 197 U. S., 516. Under the treaty of 1900 with Spain: In re Gonzalez, 1902, 118 Fed., 941; Gonzalez *v.* Williams, 1903, 192 U. S., 1.

The cases show clearly that the time at which inhabitants become citizens of the United States in acquired territory is a matter for specification in the treaty. For instance, it appears that in the treaty of 1819 the rights of citizenship were conferred upon the inhabitants of the ceded territory of Florida before the territory was admitted as a State of the Union, American Ins. Co. *v.* Canter, supra; and so as

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to the treaty of 1867 with Russia, Rasmussen *v.* United States, supra. On the other hand, the treaty of 1803 provided that the inhabitants should become citizens "as soon as possible." State *v.* Primrose, supra. The two cases already cited, Desbois's Case, 1812, 2 Mart., 185, and United States *v.* Laverty, 1813, 3 Mart., 736, show that under this latter treaty the inhabitants before the admission of the Territory of New Orleans as the State of Louisiana were considered as citizens of the Territory of New Orleans, who were made citizens of the United States by admission into the Union. The case of In re Harold, supra, presented a rather interesting state of facts, for it appeared there that the party who was an inhabitant of the Territory of New Orleans moved from that Territory to Pennsylvania in 1811, and it was not shown whether the removal was before or after the admission of the Territory as a State. The court held, however, that the inhabitant was a citizen of the United States.

The same question has been and is still much discussed as to the status of the peoples in Porto Rico and the Philippines, under the treaty of 1900, but there has been no decision of the question. This question has been sufficiently discussed in Part I, Ch. I, sec. 1, D.

The treaty of 1848 seems to have conferred citizenship upon all the inhabitants of the ceded territory who did not, within a specified time, declare their intention to retain their Mexican citizenship, though it has been held that they were not entitled to all the privileges of citizens of the United States until the ceded territory was incorporated into a State. People *v.* De La Guerra, supra; and see Murphy *v.* Ramsey, supra.

Treaties have given the rights of citizenship, or the right to elect to become a citizen, to persons who, under our own naturalization laws, might not be naturalized. For example, the treaty of 1848 provided that Indians who were citizens of Mexico might become citizens of the United States. In re Rodriguez, supra; United States *v.* Lucero, supra; United States *v.* Santistevan, supra; and see as to the status of a free negro inhabitant of the ceded territory of Florida under the treaty of 1819, Tannis *v.* Saint Cyre, supra.

As already suggested, treaties usually provide in effect that the inhabitants of the ceded territory have a certain time within which to elect to retain their old allegiance. If they do not signify properly the intention within the time specified, they are then considered citizens of the United States. The individual treaties must be consulted in each case to determine the particular way in which under that treaty such an election must be shown. The following cases will, however, be found to bear upon this particular question: Under the early treaties with England of 1783 and 1794, see Calais *v.* Marshfield, supra; Young *v.* Peck, supra; Davis *v.* Darrow, supra; Moore *v.* Wilson, supra; Crane *v.* Reeder, supra; Trimbles *v.* Harrison, supra; McKinney *v.* Saviego, supra.[a] And under the treaty of 1848

[a] For a discussion of the effect of a party's withdrawal from a revolting territory during the revolution, upon his citizenship in the seceding territory after independence is established, see Hollingsworth *v.* Duane, 1801, Wall. C. C., 50; Kilham *v.* Ward, 1806, 2 Mass., 236; Ainslie *v.* Martin, 1813, 9 Mass., 454; Manchester *v.* Boston, 1819, 16 Mass., 230; Dos Hermanos, 1817, 2 Wheat., 76; Coxe *v.* Gulick, 1829, 5 Halst., N. J., 328; White *v.* Burnley, 1857, 20 How., 235; McKinney *v.* Saviego, 1855, 18 How., 235; Jones *v.* McMasters, 1857, 20 How., 8.

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with Mexico, see Tobin *v.* Walkinshaw, supra; Carter *v.* Territory, supra; Quintano *v.* Tompkins, supra; and generally on the whole question of election, Inglis *v.* Sailors' Snug Harbor, supra.

CHAPTER VII.—NATURALIZATION BY CONQUEST.

But few cases have arisen in the courts in which the status of people in conquered territory has been before the courts for adjudication. The principles are well settled and were in a way set forth in the quotation from American Insurance Co. *v.* Canter in the preceding chapter. Chief Justice Marshall, in the case of Johnson *v.* McIntosh, 1823, 8 Wheat., 543, 589, laid them more fully, as follows:

> The title by conquest is acquired and maintained by force. The conquerer prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually, they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers. When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he can not neglect them without injury to his fame and the hazard to his power.

In United States *v.* Percheman, 7 Pet., 51, 86, the same chief justice said:

> It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. * * * The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed.

And see United States *v.* Repentigny, 1866, 5 Wall., 211.

The question was squarely before the Court of Claims in Brown's case, 1869, 5 Court of Claims, 571, in which one Brown, formerly a subject of the Kingdom of Hanover, sought to recover the proceeds from the sale of cotton seized by the United States Government during the civil war. In 1866 Hanover had become incorporated in the Kingdom of Prussia by conquest. Brown, therefore, insisted that he was a Prussian subject, and so had a right to sue the Government under the provisions of the statute of 1868, which limited the right of suit to those aliens "who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such governments in its courts." Prussia permitted suits by American citizens in its courts. The question of jurisdiction, therefore, turned upon whether or not Brown was a subject of Prussia. In the course of his opinion, Nott, J., speaking for the court, said:

> Hanover, *by conquest*, in 1866 became incorporated in the Kingdom of Prussia. * * * When the territory and government of a kingdom pass to and become merged in the territory and government of another nation, all of its subjects pass also. The tie which binds and carries them is not bodily presence, but allegiance.

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Brown, therefore, was declared a subject of Prussia and within the privilege of the Federal statute.

The question as to the change of allegiance was presented in Leitensdorfer *v.* Webb, 1857, 20 How., 176, in which the status of an inhabitant of New Mexico was in question. Mr. Chief Justice Daniel, who delivered the opinion of the court, began by saying:

> Upon the acquisition, in the year 1846, by the arms of the United States, of the Territory of New Mexico, the civil government of this Territory having been overthrown, the officer, General Kearney, holding possession for the United States, in virtue of the power of conquest and occupancy, and in obedience to the duty of maintaining the security of the inhabitants in their persons and property, ordained, under the sanction and authority of the United States, a provisional or temporary government for the acquired country. By this substitution of a new supremacy, although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the government of their former allegiance, or those arising from contract or usage, remained in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and laws of the United States, or with any regulations which the conquering and occupying authority should ordain.

And this seems a fair statement of the law on the question.

PART III.—LOSS OF CITIZENSHIP.

CHAPTER 1.—UNDER STATUTORY PROVISION.

SECTION 1.—*Deserting soldiers.*

By an act approved March 3, 1865 (Stats. at Large, chap. 79, sec. 21), Congress provided—

> That in addition to the other lawful penalties of the crime of desertion from the military or naval service, all persons who have deserted the military or naval service of the United States, who shall not return to said service or report themselves to a provost-marshal within sixty days after the proclamation hereinafter mentioned, shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens.

This act has been before the courts in a number of cases, and while the courts have sustained it, they have construed it very strictly, and consequently have insisted that in order for it to apply the person in question must have been convicted by a court-martial. Goetscheus *v.* Matthewson, 1875, 61 N. Y., 420; Huber *v.* Reily, 1866, 53 Pa. St., 112; State *v.* Symonds, 1869, 57 Me., 148; Severance *v.* Healey, 1870, 50 N. H., 449; Holt *v.* Holt, 1871, 59 Me., 464; and see United States *v.* Snow, 1877, 2 Flipp., 113. Moreover, it must appear that the finding of the court-martial was approved.

"It (the act) means," said the court, "that the forfeiture which it prescribes, like all other penalties for desertion, must be adjudged to the convicted person, after trial by a court-martial, and sentence approved." (Huber *v.* Reily, supra.) And the conviction in such case can be proved only by a duly authenticated record. Goetscheus *v.* Matthewson, supra.

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CHAPTER 2.—EXPATRIATION.

SECTION 1.—*Right of expatriation.*

The question of the right of a citizen to expatriate himself from the American Union has been the subject of considerable discussion by the courts. One of the earliest expressions on the question is to be found in Jansen *v.* Brigantine, 1794, Bee, 11, 23, where the court, commenting upon the alleged expatriation of one of the parties to the action said:

I have perused, with attention, the cases cited on both sides as to the right of expatriation and emigration, in the general manner there laid down, where no legal prohibition exists and no prejudice is done thereby. The act of naturalization of Congress and the constitution of this State concur to sanction this doctrine, and we should with an ill grace refuse to our own citizens what we thus hold out to others.

One year later the question presented itself before the Supreme Court in Talbot *v.* Jansen, 1795, 3 Dall., 133, 162, and the court discussed the matter at considerable length. In the course of his opinion he said:

That a man ought not to be a slave; that he should not be confined against his will to a particular spot because he happened to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidently attached when he can better his situation elsewhere, much less when he must starve in one country and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world appear clearly to recognize.

The only difference of opinion is as to the proper manner of executing this right. Some hold that it is a natural, inalienable right in each individual; that it is a right upon which no act of legislation can lawfully be exercised, inasmuch as a legislature might impose dangerous restraints upon it, and, of course, it must be left to every man's will and pleasure to go off when and in what manner he pleases. This opinion is deserving of more deference, because it appears to have the sanction of the constitution of this State, if not of some other States in the Union. I must, however, presume to differ from it, for the following reasons:

1. It is not the exercise of a natural right, in which the individual is to be considered as a lone concern. As every man is entitled to claim rights in society, which it is the duty of the society to protect, he, in his turn, is under a solemn obligation to discharge all those duties faithfully which he owes, as a citizen, to the society of which he is a member, and as a man to the several members of the society individually with whom he is associated.

The view here expressed seems to have been assumed by the court in Santissima Trinidad, 1822, 7 Wheat., 347, where the court declined to give any opinion as to whether or not "an American citizen may, independent of any legislation to this effect, throw off his own allegiance to his native country." In the earlier case of the United States *v.* Gilles, 1815, 1 Pet. C. C., 159, 161, Washington, J., declared:

That I must be more enlightened upon this subject than I have yet been before I can admit that a citizen of the United States can throw off his allegiance to his country without some law authorizing him to do so.

And see also the expressions of Chief Justice Marshall in the Charming Betsy, 1804, 2 Cranch., 64, 120. However, in McIlviane *v.* Coxe, 1802, 4 Cranch., 209, the court recognized the validity of the law of New Jersey which prohibited the expatriation of certain English sympathizers described, insisting that they were still citizens of New Jersey.

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The Kentucky, in Alsberry *v.* Hawkins, 1839, 9 Dana, 177, 178, had, however, no doubt upon the matter. In the course of the opinion of Chief Justice Robertson, the following doctrine was announced:

> Whatever may be the speculative or practical doctrines of feudal governments or ages, *allegiance* in these United States, whether local or national, is, in our judgment, altogether conventional, and may be repudiated by the native as well as adopted citizen with the presumed concurrence of the government without its formal or expressed sanction. Expatriation may be considered a practical and fundamental doctrine of America. American history, American institutions, and American legislation, all recognize it. It has grown with our growth and strengthened with our strength. The political obligations of the citizen and the interests of the republic may forbid a renunciation of allegiance by his mere volition or declaration at any time, and under all circumstances, and therefore the government, for the purpose of preventing abuse and securing public welfare, may regulate the mode of expatriation. But when it has not prescribed any limitation on the right and the citizen has, in good faith, abjured his country and become a subject or citizen of a foreign nation, he should, as to his native government, be considered as denationalized, especially so far as his civil rights may be involved, and at least so long as that government shall seem to acquiesce in his renunciation of his political rights and obligations.

The same view, substantially, was expressed by one of the Federal circuit courts in Stoughton *v.* Taylor, before 1840, 2 Paine C. C., 656, 661: "In this country," said Van Ness, J., "expatriation is conceived to be a fundamental right. As far as the principles maintained and the practice adopted by the Government of the United States is evidence of its existence, it is fully recognized. It is constantly exercised and has never in any way been restrained."

The above cases represent thoroughly the legal thought on the question during the period covered by the cases. As will be noted, the earlier cases, with the exception of the earliest, and all of the Supreme Court cases, seem uncertain as to the right of expatriation in an American citizen in the absence of some authorizing statute of Congress. Some of the State courts and one of the circuit courts used strong language, however, in favor of that right. The matter stood thus until 1866, when, owing to the Fenian trouble in Great Britain, and the consequent troubles into which some naturalized Americans fell, Congress passed an act "concerning the rights of American citizens in foreign States," the preamble of which read:

> Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and
>
> Whereas, in the recognition of this principle, this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and
>
> Whereas, it is claimed that such American citizens, with their descendants, are subjects of foreign States, owing allegiance to the governments thereof; and
>
> Whereas, it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, * * *

Since the passage of this act the question does not seem to have been squarely raised in the Supreme Court, and consequently its meaning with reference to the right of American citizens to expatriate themselves has not by that body been pronounced upon. The act has, however, been before the Federal courts a number of times; but the results have not been uniform.

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In 1879, in United States *v.* Crook, 5 Dill., 453, 464, the court, in passing upon the right of an Indian to forsake his tribal relations, took occasion to speak of the right of expatriation, which he denominated a "God-given right." In 1897, Jennes *v.* Landes, 84 Fed., 73, 74, the statute was expressly referred to by the court, and an interpretation given of its meaning, Hanford, district judge, saying:

> A change of allegiance from one government to another can only be effected by the voluntary action of the subject, complying fully with the conditions of naturalization laws, so that there is concurrent action and assent on the part of both the subject and the government to which the new allegiance attaches. Authorities entitled to great respect have been cited in the argument, holding that it is also necessary to have assent on the part of the government renounced. In my opinion that rule no longer obtains in the United States, since Congress, by the act of July 27, 1868, now reenacted in section 1999, Revised Statutes, has expressly declared it to be the policy of our Government that the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness.

A different view of the act, however, was taken in Comitis *v.* Parkerson, 1893, 56 Fed., 556, 559, where the court, after discussing the early cases and the uncertainty which had existed in the various departments of the Government as to the right of expatriation on the part of an American citizen, and, further, after a careful analysis of the statute itself and its terms, expressed the following conclusion:

> It is to be observed that the act itself, as does its title, deals only with the protection of aliens by birth who have become citizens by naturalization. As to them it declares it to be the determination of the United States to accord to them when in foreign states the same protection as is accorded to native-born citizens similarly situated. The whole scope and force of the act, when most liberally construed, even when expanded by the more general terms of the preamble, declares that naturalized citizens having, according to the principles of our Government, the same rights as native-born citizens shall have by law the same protection abroad. As to whether allegiance can be acquired or lost by any other means than statutory naturalization is left by Congress in precisely the same situation as it was before the passage of this act. During the year 1868, and since, five treaties have been entered into between the United States and foreign governments based upon this statute, in which the right of expatriation is dealt with, * * * and in all these treaties the right, is confined, as is the statute, to that of citizens or subjects of our country who have become citizens or subjects of others by direct statutory naturalization. So that, with reference to the question before the court, the law is left where it was previous to the year 1868 and Congress has made no law authorizing any implied renunciation of citizenship.

This view of the statute seems sound, and the question, therefore, is still more or less an open one whether a native American citizen may expatriate himself.

SECTION 2.—*What may amount to expatriation.*

It has been said "that a man could not throw off his natural allegiance, except in assuming some new citizenship," Baird *v.* Byrne, 1845, 3 Wall., jr., 1, 12; and, as already suggested above, other courts have held that it must be with the sanction of the government being forsaken. See also Shearer *v.* Clay, 1822, 1 Litt. (Ky.), 260.

A. EXPATRIATION BY TAKING OATH OF ALLEGIANCE TO A FOREIGN GOVERNMENT.

One of the earliest cases in which the question was presented as to the effect upon American citizenship of the taking of an oath of allegiance to a foreign power was presented in Talbot *v.* Jansen, 1795,

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3 Dall., 133, 164, and the court, in denying that such had the effect of expatriating the citizen, used the following language:

Admitting he had a right to expatriate himself without any law prescribing the method of his doing so we surely must have some evidence that he had done it. There is none, but that he went to the West Indies and took an oath to the French Republic and became a citizen there. I do not think that merely taking such an oath and being admitted a citizen there in itself is evidence of a bona fide expatriation or completely discharges the obligations he owes to his own country. Had there been any restrictions by our own law on his quitting this country, could any act of a foreign country operate as a repeal of these? Certainly not. When he goes there, they know nothing of him, perhaps, but from his own representation. He becomes a citizen of the new country at his peril. The act is complete if he has legally quitted his own; if not, it is subordinate to the allegiance he originally owed. By allegiance I mean that tie by which a citizen of the United States is bound as a member of the society. Did any man suppose when the rights of citizenship were so freely and honorably bestowed on the unfortunate Marquis de la Fayette that that absolved him as a subject or citizen of his own country? It had only this effect: That whenever he came into this country and chose to reside here he was ipso facto to be deemed a citizen without anything further. The same consequence, I think, would follow in respect to rights of citizenship conferred by the French Republic upon some illustrious characters in our own and other countries. If merely intended, as ingeniously suggested at the bar, that upon going to France and performing the usual requisites they should be then French citizens, where is the honor of it, since any man may avail himself of an indiscriminate indulgence granted by law. Some disagreeable dilemmas may be occasioned by this double citizenship, but the principles, as I have stated them, appear to me to be warranted by law and reason, and if any difficulties arise they show more strongly the importance of a law regulating the exercise of the right in question.

In the *Charming Betsy*, supra, the same result was reached with reference to one who had taken the oath of allegiance to Denmark, and in Fish *v.* Stoughton, 1801, 2 Johns. Cas., 407, the court held that where a naturalized citizen, formerly a British subject, had taken the oath of allegiance to the King of Spain and had been appointed consul for Spain in New York, he still remained an American citizen. However, in Brown *v.* Dexter, 1884, 66 Cal., 39, the court regarded as an alien one who had moved from the United States into Canada and had there taken the oath of allegiance and become a permanent resident. And see Kircher *v.* Murray, 1893, 54 Fed., 617.

B. BY PERFORMANCE OF OFFICIAL DUTIES UNDER APPOINTMENT FROM A FOREIGN GOVERNMENT.

As already pointed out in the case of Fish *v.* Stoughton, supra, the performance of the duties of consul for another country, even if accompanied by an oath of allegiance, has no effect upon the citizenship of the person so acting. A similar result was reached with reference to the holding of local offices in Calais *v.* Marshfield, 1849, 30 Me., 515.

C. PERFORMANCE OF MILITARY DUTY.

(a) EXPEDITIONS AGAINST NEUTRALS.

In Santissima Trinidad, 1821, 1 Brock., 478, s. c. on appeal 7 Wheat., 283, it appeared that an American citizen had notified the American consul in a foreign port of his intention to expatriate himself, and that he subsequently went into the naval service of a neutral country. The court held that these acts would not amount to an expatriation. In Kircher *v.* Murray, supra, however, where an American citizen

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emigrated to Texas and served in the Texas army during its revolutionary struggles, and through his services was made a citizen of the State of Texas, the court held not only that he had himself become a citizen but that his wife was also a citizen of the State of Texas. This case does not of itself go to the point that the husband or wife had expatriated themselves since the case could have been decided the same way by recognizing dual allegiance.*

(b) EXPEDITIONS AGAINST THE UNITED STATES.

In State *v.* Adams, 1876, 45 Iowa, 99, it appeared that an American citizen had involuntarily served in the Canadian army during the war of 1812 between England and the United States. The court held that such involuntary service did not amount to an act of expatriation. And see McIlvaine *v.* Coxe, supra. In Burkett *v.* McCarty, 1874, 10 Buch., 758, the validity of an act of the Kentucky legislature was called in question, known as the expatriation act, which provided that those who joined the Confederate army should be deemed to have denationalized themselves, and so, of course, have forfeited their citizenship. The court held that such an act was unconstitutional and that citizenship was not forfeited by fighting in the Confederate army. (It should be noted that this seemingly involved the question of state citizenship only.)

D. EXERCISING THE FUNCTIONS OF A CITIZEN.

The courts have also held that it is immaterial that an American citizen moves to a foreign country and there exercises the functions of a citizen, such as voting; he still retains in spite of this his former citizenship. Calais *v.* Marshfield, supra; State *v.* Adams, supra; Ware *v.* Wisner, 1883, 50 Fed., 310.

E. RESIDENCE.

A number of cases have stated that in order to effect a change of allegiance there must be a change of domicil. Thus where an American citizen, while anouncing his intention to expatriate himself, went personally to a foreign country but left his family in the United States, it was held that he had not changed his domicil. Santissima Trinidad, supra; McIlvaine *v.* Coxe, supra. In some cases the term expatriation seems to have been made also synonymous with emigration. Jansen *v.* Brigantine, 1794, Bee, 1123; Murray *v.* McCarty, 1811, 2 Munf., 393, 397.

The question of expatriation by residence may arise in connection with two classes of people, native citizens and naturalized citizens.

(a) NATIVE AMERICAN CITIZENS.

It may be stated, as a general proposition, that mere residence abroad for purposes of business does not change the allegiance of a subject or citizen. This position was very fully laid down by Marshall, Chief Justice, in the *Charming Betsy*, supra, where he said:

Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character otherwise than in such manner as may be prescribed by law,

* In Calais *v.* Marshfield, supra, the citizen had performed voluntary service in the local militia, but this was declared to be insufficient to produce expatriation.

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is a question which it is not necessary at present to decide. The cases cited at bar, and the arguments drawn from the general conduct of the United States on this interesting subject, seem completely to establish the principle that an American citizen may acquire in a foreign country the commercial privileges attached to his domicil, and be exempted from the operation of an act expressed in such general terms as that now under consideration. Indeed, the very expressions of the act would seem to exclude a person, under the circumstances of Jared Shattuck. He is not a person under the protection of the United States. The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor would be considered as a justifiable interpositon. But his situation is completely changed, where, by his own act, he has made himself the subject of a foreign power. Although this act may not be sufficient to rescue him from punishment for any crime committed against the United States, a point not intended to be decided, yet it certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance, and consequently takes him out of the description of the act.

It is therefore the opinion of the court that the *Charming Betsy*, with her cargo, being at the time of her recapture the bona fide property of a Danish burgher, is not forfeitable, in consequence of her being employed in carrying on trade and commerce with a French island.

The question has come up under a variety of circumstances. In Beck *v.* McGillis, 1850, 9 Barb., 35, a native-born citizen went abroad, where he married and remained. The court held that he had not lost his citizenship. And see Albany *v.* Derby, 1858, 30 Vt., 718, where the question seems to be made to turn upon the animus of the residence. In Lynch *v.* Clark, 1844, 1 Sandf. Ch., 583, a native-born American of alien parents returns to the country of his parent's nativity, where he remained. The court held that he had not lost his citizenship. And see, generally, the section above on the rights of children born in America of alien parents.

Of course, in view of these cases, it must follow that where a citizen goes abroad merely for pleasure he will not lose his citizenship. United States *v.* Gillies, 1815, 1 Peters C. C., 159. And see the interesting case, already referred to and discussed, of Barzizas *v.* Hopkins, 1824, 2 Rand., 279. It is clear also from the principle of the above cases that residence abroad for the purpose of obtaining an education will not denationalize a citizen. Matter of Rice, 1877, 7 Bailey, 22. A rather interesting question with reference to foreign residence was raised in the case of Woolbridge *v.* Wilkins, 1839, 3 How. (Miss.), 360, in which it appeared that a citizen of the United States had been appointed a consul to the State of Texas, where he had gone and taken up his residence. While there he expressed himself as intending to become a citizen of Texas and take up there the practice of law. These statements were relied upon as showing his expatriation. The court, of course, held they had no such force.

If the residence abroad by an American citizen has been during a revolution, by which that country has acquired an independent sovereignty, the courts have held that in such case a resident has acquired a citizenship there, and hence has expatriated himself from his native country, since it is presumed that under these conditions the citizen thus resident assisted in the formation of the new state. This was the holding of Alsberry *v.* Hawkins, supra, and in Moore *v.* Tinsdale, 1845, 5 B. Mon., 352. The latter case, however, holding

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that as to the wife of a citizen who thus took part in the revolution she might, by coming back into the United States on the death of her husband, with intent to reside here, redintegrate herself as an American citizen. In Alsberry *v.* Hawkins, where the wife had remained for a number of years subsequent to the revolution, it was held she had become unqualifiedly an alien.

(b) NATURALIZED AMERICAN CITIZEN.

First. In the country of the first allegiance: One of the most extreme cases to be found on this point is that of Young *v.* Peck, 1839, 21 Wend., 389, s. c. affirmed on appeal, 26 Wend., 613, from which decision an appeal was dismissed on a compromise in 1 How., 250. It will be recalled that the facts were that the father of the person in question had emigrated to the United States before or during the revolution, and that he remained here after that war, becoming thereby, under the terms of the treaty, a citizen of the United States. The child, a daughter, remained in Scotland, the father's native country, until she was 50 years of age, having during that time been married to a native of Great Britain, with whom she lived until he died. The court held that the naturalization of her father had naturalized her, and that she had retained her American citizenship. And the same result was reached in another case, almost as strong, Halsey *v.* Beer, 1889, 52 Hun., 366, in which a naturalized American citizen, formerly a British subject, returned to England, where he married and afterwards lived.

If these holdings be sound, it would seem, of course, to follow that residence in a foreign country for the purposes of carrying on a business merely would not effect expatriation, and the decisions have gone to this point—*The Frances*, 1813, 1 Gall., 614, affirm 8 Cranch, 363; the *St. Lawrence*, 1813, i. d., 467, affirmed 8 Cranch, 434; the *Venus*, 1814, 2 Cranch, 253—even though the party is conducting a business in the foreign country at the time of war between that country and his own, providing that on the outbreak of the war he puts himself in itinerary for his adopted country.

Second. In a country other than that of his first allegiance: This question was presented in the case of Stoughton *v.* Taylor, supra, where a native of Great Britain had become a naturalized American citizen and later had attempted to denationalize himself as an American citizen and become a subject of the Government of Buenos Ayres. He had lived in Buenos Ayres for a short time, and had sailed for a considerable time on one of the public vessels of that Government. The court said:

> The evidence in this case is emigration more than twelve years since—swearing allegiance to another government eight years ago—entering into its service, and continuing in it unifromly from that time to this. On this evidence I can not hesitate to say that the defendant has lost his character as a citizen of the United States; he has abandoned his rights as such; he can not now claim them, and can not be called on to perform any of the duties incident to that character.

F. MARRIAGE TO A FOREIGN SUBJECT.

This question has already been treated above in connection with the cases of Jennes *v.* Landes, 1897, 84 Fed., 73; Pequignot *v.* Detroit, 1883, 16 Fed., 211; Comitis *v.* Parkerson, 1893, 56 Fed., 556. In the

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case first named the court recognized that there might be expatriation by virtue of marriage to a foreign subject. In the second case it was expressly held that marriage of a native American woman to a foreign subject denationalized the woman. The third case, which is distinguishable from the last preceding on its facts (and was so distinguished by the court), is in spirit contrary to it, and held that marriage to an alien who was a resident in this country had no such effect.

SECTION 3.—*Reversion of original citizenship.*

While this matter has been more or less covered by what has been already said in connection with the last section, it is of sufficient importance to call for a few additional remarks. In Dos Hermanos, 1817, 2 Wheat., 76, 98, the court, in commenting upon the facts of that case, said:

> In respect to the domicil of Mr. Green, there is certainly much reason to doubt if it would be sufficient to protect him even if he could show himself at the time of the capture a citizen of Carthagena. For, if upon his return to New Orleans after the war acquired a domicil there (of which the circumstances of his becoming the owner of a privateer in that port affords a strong presumption), he became a redintegrated American citizen, and he could not, by an emigration afterwards, flagrante bello, acquire a neutral character, so as to separate himself from that of his native country.

In Stoughton *v.* Taylor, supra, while the court ruled as already indicated on the question of residence in a foreign country, together with an oath of allegiance, it also remarked that there—

> is another circumstance well worthy of consideration. It appears that the defendant was in the naval service of Great Britain immediately antecedent to his becoming a resident of Buenos Ayres and assuming allegiance to the Government of that country. It is well known that upon the principles maintained by the British Government the native character, if under any circumstances it can temporarily be lost, easily reverts. A return to the country, or into its military or naval service, restores it. In the view of that Government, therefore, the defendant was completely a British subject prior to his becoming a citizen of the United Provinces of South America. I am inclined to think that even here this return to the service of his native country must be considered an abandonment and forfeiture of his citizenship.

In Moore *v.* Tisdale, 1845, 5 B. Mon., 352 (in which case it will be remembered the husband and wife had emigrated to Texas during the period of the revolutionary struggle), the court said:

> And though it should be farther conceded, which we need not decide, that so long as the coveture might last, and they should continue their residence in Texas, both the husband and wife might be regarded as citizens of Texas, and as aliens to the United States; still we are not prepared to admit that upon the death of the husband, the survived wife is so bound by his election, and by such acquiescence on her part as may have been prompted by conjugal affection and duty, that her character and rights as a citizen or alien must be irrevocably identified with those which her husband had assumed before his death. * * * we think the inference of alienage, arising from the facts existing at the death of the husband, may be, and is repelled by the subsequent fact that within a few months afterwards the widow returned to this State, where she has remained ever since, and without any intention, so far as appears, of ever again residing in Texas.

See also Trimbles *v.* Harrison, 1840, 1 B. Mon., 140, 147, where a child born a British subject, but who subsequently was naturalized as an American citizen by virtue of the naturalization of his father, who had remained here during the revolution, removed to England, which he made his permanent residence, and there married

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a British subject; he was held not entitled to take land in Kentucky by descent from his father. The principle of reversion has been expressed in these few words, that "the moment a foreign domicil is abandoned the native domicil is reacquired." Green's Son *v.* Salas, 1887, 31 Fed., 106, 112. The principle seems also to have been applied in certain Indian cases, where a white man, adopted into an Indian tribe, later abandoned the tribe and his Indian relationship and resumes the habits and customs of civilization. The courts have held that this act redintegrated him to American citizenship. Ex parte Kenyon, 1878, 5 Dill., 385; Roff *v.* Burney, 1897, 168 U. S., 218. And consult generally the cases above on residence abroad in their native country by naturalized citizens.

SECTION 4.—*Effect of expatriation.*

If the party who alleges expatriation has indeed become a citizen of a foreign country, he has, of course, acquired such rights as a citizen as the laws of the foreign state may give. With reference to his status in our own country after his expatriation, Chief Justice Marshall, in Santissima Trinidad, supra, said:

> The individual who divests himself of the obligations of a citizen, if this be within the power of an individual, loses the rights which are connected with those obligations. He becomes an alien. His lands, if he has any, are escheatable. He can not recover these rights by residence, but must go through that process which the laws prescribe for the naturalization of an alien born.

EXHIBIT A.

TEXT OF LAWS.

CHAP. III.—An Act To establish an uniform rule of naturalization.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the proceedings thereon; and thereupon such person shall be considered as a citizen of the United States. And the children of such persons so naturalized, dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States. And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens: *Provided,* That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States: *Provided also,* That no person heretofore proscribed by any state, shall be admitted a citizen as aforesaid, except by an act of the legislature of the state in which such person was proscribed.

Approved, March 26, 1790.

(U. S. Statutes at Large, Vol. I, pp. 103–104.)

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* This act was repealed by an act passed January 29, 1795, chap. 20.

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CHAP. XX.—An Act To establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject.

For carrying into complete effect, the power given by the constitution, to establish an uniform rule of naturalization throughout the United States:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:—

First. He shall have declared on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territories northwest or south of the river Ohio, or a circuit or district court of the United States, three years, at least, before his admission, that it was bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

Secondly. He shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he has resided within the United States, five years at least, and within the state or territory, where such court is at the time held, one year at least; that he will support the constitution of the United States; and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. The court admitting such alien, shall be satisfied that he has resided within the limits and under the jurisdiction of the United States five years; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

Fourthly. In case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made; which renunciation shall be recorded in the said court.

SEC. 2. *Provided always, and be it further enacted*, That any alien now residing within the limits and under the jurisdiction of the United States, may be admitted to become a citizen, on his declaring on oath or affirmation, in some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the same, and one year, at least, within the state or territory where such court is at the time held; that he will support the constitution of the United States; and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; and moreover on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and, where the alien applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.

SEC. 3. *And be it further enacted*, That the children of persons duly naturalized, dwelling within the United States, and being under the age of twenty-one years, at the time of such naturalization; and the children of citizens of the United States, born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons, whose fathers have never been resident in the United States: *Provided also*, That no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain, during the late war, shall be admitted a citizen as aforesaid, without the consent of the legislature of the state, in which such person was proscribed.

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SEC. 4. *And be it further enacted*, That the act intituled "An act to establish an uniform rule of naturalization," passed the twenty-sixth day of March, one thousand seven hundred and ninety, be, and the same is hereby repealed.

Approved, January 29, 1795.

U. S. Statutes at Large, Vol. I, pp. 414–415.

CHAP. LIV.—An Act Supplementary to and to amend the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no alien shall be admitted to become a citizen of the United States, or of any state, unless in the manner prescribed by the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject," he shall have declared his intention to become a citizen of the United States, five years, at least, before his admission, and shall, at the time of his application to be admitted, declare and prove, to the satisfaction of the court having jurisdiction in the case, that he has resided within the United States fourteen years, at least, and within the state or territory where, or for which such court is at the time held, five years, at least, besides conforming to the other declarations, renunciations and proofs, by the said act required, anything therein to the contrary hereof notwithstanding: *Provided*, that any alien, who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may, within one year after the passing of this act—and any alien who shall have made the declaration of his intention to become a citizen of the United Sates, in conformity to the provisions of the act intituled "An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject," may, within four years after having made the declaration aforesaid, be admitted to become a citizen, in the manner prescribed by the said act, upon his making proof that he has resided five years, at least, within the limits, and under the jurisdiction of the United States: *And provided also*, that no alien, who shall be a native, citizen, denizen or subject of any nation or state with whom the United States shall be at war, at the time of his application, shall be then admitted to become a citizen of the United States.

SEC. 2. *And be it further enacted*, That it shall be the duty of the clerk, or other recording officer of the court before whom a declaration has been, or shall be made, by any alien, of his intention to become a citizen of the United States, to certify and transmit to the office of the Secretary of State of the United States, to be there filed and recorded, an abstract of such declaration, in which, when hereafter made, shall be a suitable description of the name, age, nation, residence and occupation, for the time being, of the alien; such certificate to be made in all cases, where the declaration has been or shall be made, before the passing of this act, within three months thereafter; and in all other cases, within two months after the declaration shall be received by the court. And in all cases hereafter arising, there shall be paid to the clerk, or recording officer as aforesaid, to defray the expense of such abstract and certificate, a fee of two dollars; and the clerk or officer to whom such fee shall be paid or tendered, who shall refuse or neglect to make and certify an abstract, as aforesaid, shall forfeit and pay the sum of ten dollars.

SEC. 3. *And be it further enacted*, That in all cases of naturalization heretofore permitted or which shall be permitted, under the laws of the United States, a certificate shall be made to, and filed in the office of the Secretary of State, containing a copy of the record respecting the alien, and the decree or order of admission by the court before whom the proceedings thereto have been, or shall be had: And it shall be the duty of the clerk or other recording officer of such court, to make and transmit such certificate, in all cases which have already occurred, within three months after the passing of this act; and in all future cases, within two months from and after the naturalization of an alien shall be granted by any court competent thereto:—And in all future cases, there shall be paid to such clerk or recording officer the sum of two dollars, as a fee for such certificate, before the naturalization prayed for, shall be allowed. And the clerk or recording officer, whose duty it shall be, to make and transmit the certificate aforesaid, who shall be convicted of a wilful neglect therein, shall forfeit and pay the sum of ten dollars, for each and every offence.

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SEC. 4. *And be it further enacted*, That all white persons, aliens, (accredited foreign ministers, consuls, or agents, their families and domestics, excepted) who, after the passing of this act, shall continue to reside, or who shall arrive, or come to reside in any port or place within the territory of the United States, shall be reported, if free, and of the age of twenty-one years, by themselves, or being under the age of twenty-one years, or holden in service, by their parent, guardian, master or mistress in whose care they shall be, to the clerk of the district court of the district, if living within ten miles of the port or place, in which their residence or arrival shall be, and otherwise, to the collector of such port or place, or some officer or other person there, or nearest thereto, who shall be authorized by the President of the United States, to register aliens: And report, as aforesaid, shall be made in all cases of residence, within six months from and after the passing of this act, and in all after cases, within forty-eight hours after the first arrival or coming into the territory of the United States, and shall ascertain the sex, place of birth, age, nation, place of allegiance or citizenship, condition or occupation, and place of actual or intended residence within the United States, of the alien or aliens reported, and by whom the report is made. And it shall be the duty of the clerk, or other officer, or person authorized, who shall receive such report, to record the same in a book to be kept for that purpose, and to grant to the person making the report, and to each individual concerned therein, whenever required, a certificate of such report and registry; and whenever such report and registry shall be made to, and by any officer or person authorized, as aforesaid, other than the clerk of the district court, it shall be the duty of such officer, or other person, to certify and transmit, within three months thereafter, a transcript of such registry, to the said clerk of the district court of the district in which the same shall happen; who shall file the same in his office, and shall enter and transcribe the same in a book to be kept by him for that purpose. And the clerk, officer or other person authorized to register aliens, shall be entitled to receive, for each report and registry of one individual or family of individuals, the sum of fifty cents, and for every certificate of a report and registry the sum of fifty cents, to be paid by the person making or requiring the same, respectively. And the clerk of the district court, to whom a return of the registry of any alien, shall have been made, as aforesaid, and the successor of such clerk, and of any other officer or person authorized to register aliens, who shall hold any former registry, shall and may grant certificates thereof, to the same effect as the original register might do. And the clerk of each district court shall, during one year from the passing of this act, make monthly returns to the Department of State, of all aliens registered and returned, as aforesaid, in his office.

SEC. 5. *And be it further enacted*, That every alien who shall continue to reside, or who shall arrive, as aforesaid, of whom a report is required as aforesaid, who shall refuse or neglect to make such report, and to receive a certificate thereof, shall forfeit and pay the sum of two dollars; and any justice of the peace, or other civil magistrate, who has authority to require surety of the peace, shall and may, on complaint to him made thereof, cause such alien to be brought before him, there to give surety of the peace and good behaviour during his residence within the United States, or for such term as the justice or other magistrate shall deem reasonable, and until a report and registry of such alien shall be made, and a certificate thereof, received as aforesaid; and in failure of such surety, such alien shall and may be committed to the common gaol, and shall be there held, until the order which the justice or magistrate shall and may reasonably make, in the premises, shall be performed. And every person, whether alien, or other, having the care of any alien or aliens, under the age of twenty-one years, or of any white alien holden in service, who shall refuse and neglect to make report thereof, as aforesaid, shall forfeit the sum of two dollars, for each and every such minor or servant, monthly, and every month, until a report and registry, and a certificate thereof, shall be had, as aforesaid.

SEC. 6. *And be it further enacted*, That in respect to every alien, who shall come to reside within the United States after the passing of this act, the time of the registry of such alien shall be taken to be the time when the term of residence within the limits, and under the jurisdiction of the United States, shall have commenced, in case of an application by such alien, to be admitted a citizen of the United States; and a certificate of such registry shall be required, in proof of the term of residence, by the court to whom such application shall and may be made.

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SEC. 7. *And be it further enacted*, That all and singular the penalties established by this act, shall and may be recovered in the name, and to the use of any person, who will inform and sue for the same, before any judge, justice, or court, having jurisdiction in such case, and to the amount of such penalty, respectively.

Approved, June 18, 1798.

(U. S. Statutes at Large, Vol. I, pp. 566–569.)

CHAP. XXVIII.—An Act To establish an uniform rule of Naturalization, and to repeal the acts heretofore passed on that subject.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:—

First, That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least, before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

Secondly, That he shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly, That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: *Provided*, that the oath of the applicant shall, in no case, be allowed to prove his residence.

Fourthly, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, that no alien who shall be a native citizen, denizen or subject of any country, state or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States: *Provided also*, that any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject: and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the

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court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof: and provided also, that any alien who was residing within the limits, and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

SEC. 2. *Provided also, and be it further enacted*, That in addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the passing of this act, shall, in order to become citizens of the United States, make registry, and obtain certificates, in the following manner, to wit: every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state; and such report shall ascertain the name, birthplace, age, nation and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate under his hand and seal of office of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate granted pursuant to this act, to an individual or family, fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.

SEC. 3. *And whereas*, doubts have arisen whether certain courts of record in some of the states, are included within the description of district or circuit courts: *Be it further enacted*, that every court of record in any individual state, having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States, and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided also*, that no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain, during the late war, shall be admitted a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed.

SEC. 5. *And be it further enacted*, That all acts heretofore passed respecting naturalization, be, and the same are hereby repealed.

Approved, April 14, 1802.

(U. S. Statutes at Large, Vol. 2, pp. 153–155.)

CHAP. XLVII.—An Act In addition to an act intituled "An Act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United

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States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the acts heretofore passed on that subject."

SEC. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Approved, March, 26, 1804.
(U. S. Statutes at Large, vol. 2, pp. 292, 293).

CHAP. XLII.—An Act For the regulation of seamen on board the public and private vessels of the United States.

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SEC. 12. *And be it further enacted*, That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not for the continued term of five years next preceding his admission as aforesaid have resided within the United States, without being at any time during the said five years out of the territory of the United States.

SEC. 13. *And be it further enacted*, That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, any certificate or evidence of citizenship referred to in this act; or shall pass, utter, or use as true, any false, forged or counterfeited certificate of citizenship, or shall make sale or dispose of any certificate of citizenship to any person other than the person for whom it was originally issued, and to whom it may of right belong, every such person shall be deemed and adjudged guilty of felony; and on being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three, or more than five years, or be fined in a sum not less than five hundred dollars, nor more than one thousand dollars, at the discretion of the court taking cognizance thereof.

Approved, March 3, 1813.
(U. S. Statutes at Large, vol. 2, p. 811).

CHAP. XXXVI.—An Act Supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law, of their intentions to become citizens of the United States, or who by the existing laws of the United States, were on that day entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies at the times and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Approved, July 30, 1813.
(U. S. Statutes at Large, Vol. III, p. 53.)

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CHAP. XXXII.—An Act Relative to evidence in cases of naturalisation.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the certificate of report and registry, required as evidence of the time of arrival in the United States, according to the second section of the act of the fourteenth of April, one thousand eight hundred and two, entitled "An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on this subject;" and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a court of record, and required as the first condition, according to the first section of said act, shall be exhibited by every alien on his application to be admitted a citizen of the United States, in pursuance of said act, who shall have arrived within the limits, and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court, admitting such alien; otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States, and any pretended admission of an alien, who shall have arrived within the limits and under the jurisdiction of the United States, since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid.

SEC. 2. *Provided, and be it enacted*, That nothing herein contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty-sixth of March, one thousand eight hundred and four, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject.'" Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Approved, March 22, 1816.
(U. S. Statutes at Large, Vol. III, pp. 258, 259.)

CHAP. CLXXXVI.—An Act In further addition to "An act to establish an uniform rule of Naturalisation, and to repeal the acts heretofore passed on that subject."

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition, three

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years previous to his admission: *Provided*, Such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

SEC. 2. *And be it further enacted*, That no certificates of citizenship, or naturalization, heretofore obtained from any court of record within the United States, shall be deemed invalid, in consequence of an omission to comply with the requisition of the first section of the act, entitled "An act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

SEC. 3. *And be it further enacted*, That the declaration required by the first condition specified in the first section of the act, to which this is in addition, shall, if the same has been bona fide made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

SEC. 4. *And be it further enacted*, That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said act, or in any subsequent act, to the contrary notwithstanding.

Approved, May 26, 1824.

(U. S. Statutes at Large, Vol. IV, p. 69.)

CHAP. CXVI.—An Act To amend the acts concerning naturalization.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the second section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act, entitled "An act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be, and the same are hereby, repealed.

SEC. 2. *And be it further enacted*, That any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted: and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States: which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Approved, May 24, 1828.

(U. S. Statutes at Large, Vol. IV, pp. 310, 311.)

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CHAP. LXXII.—An Act To amend the act entitled "An act for the regulation of Seamen on board the public and private vessels of the United States," passed the third of March, eighteen hundred and thirteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last clause of the twelfth section of the act hereby amended, consisting of the following words, to wit, "without being at any time during the said five years out of the territory of the United States," be, and the same is hereby, repealed.

Approved, June 26, 1848.
(U. S. Statutes at Large, Vol. IX, p. 240.)

CHAP. LXXI.—An Act To secure the right of Citizenship to children of Citizens of the United States born out of the Limits thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however,* That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

SEC. 2. *And be it further enacted,* That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

Approved, February 10, 1855.
(U. S. Statutes at Large, Vol. X, p. 604.)

CHAP. CC.—An Act To define the Pay and Emoluments of certain Officers of the Army, and for other Purposes.

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SEC. 21. *And be it further enacted,* That any alien, of the age of twenty-one years and upwards, who has enlisted or shall enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

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Approved, July 17, 1862.
(U. S. Statutes at Large, Vol. XII, p. 597.)

CHAP. XXXI.—An Act To protect all Persons in the United States in their Civil Rights, and furnish the Means of their vindication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Passed April 9, 1866.
(U. S. Statutes at Large, Vol. XIV, p. 27.)

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CHAP. CCXLIX.—An Act Concerning the Rights of American Citizens in foreign States.

Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendents, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

SEC. 2. *And be it further enacted*, That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

SEC 3. *And be it further enacted*, That whenever it shall be made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

Approved, July 27, 1868.

(U. S. Statutes at Large, Vol. XV, pp. 223, 224.)

CHAP. CCLIV.—An Act To amend the Naturalization Laws and to punish Crimes against the same, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any oath, affirmation, or affidavit shall be made or taken under or by virtue of any act or law relating to the naturalization of aliens, or in any proceedings under such acts or laws, and any person or persons taking or making such oath, affirmation, or affidavit, shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall upon conviction thereof be sentenced to imprisonment for a term not exceeding five years and not less than one-year, and to a fine not exceeding one thousand dollars.

SEC. 2. *And be it further enacted*, That if any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge, or counterfeit any oath, affirmation, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law or act relating to or providing for the naturalization of aliens; or shall utter, sell, dispose of, or use as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper, or proceeding as aforesaid; or sell or dispose of to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate,

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judgment, or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or if any person shall obtain, accept, or receive any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the court. And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise, or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party guilty of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal.

SEC. 3. *And be it further enacted*, That any person who shall knowingly use any certificate of naturalization heretofore granted by any court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence, or has been or shall be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the court taking cognizance of the same.

SEC. 4. *And be it further enacted*, That the provisions of this act shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization shall be commenced, had, or taken, or attempted to be commenced; and the courts of the United States shall have jurisdiction of all offenses under the provisions of this act, in or before whatsoever court or tribunal the same shall have been committed.

SEC. 5. *And be it further enacted*, That in any city having upwards of twenty thousands inhabitants, it shall be the duty of the judge of the circuit court of the United States for the circuit wherein said city shall be, upon the application of two citizens, to appoint in writing for each election district or voting precinct in said city, and to change or renew said appointment as occasion may require, from time to time, two citizens resident of the district or precinct, one from each political party, who, when so designated, shall be, and are hereby, authorized to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for representative in Congress, and at all times and places for holding elections of representatives in Congress, and for counting the votes cast at said elections, and to challenge any name proposed to be registered, and any vote offered, and to be present and witness throughout the counting of all votes, and to remain where the ballot-boxes are kept at all times after the polls are open until the votes are finally counted; and said persons and either of them shall have the right to affix their signature or his signature to said register for the purposes of identification, and to attach thereto, or to the certificate of the number of votes cast, *and* [any] statement touching the truth or fairness thereof which they or he may ask to attach; and any one

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who shall prevent any person so designated from doing any of the acts authorized as aforesaid, or who shall hinder or molest any such person in doing any of the said acts, or shall aid or abet in preventing, hindering, or molesting any such person in respect of any such acts, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment not less than one year.

SEC. 6. *And be it further enacted*, That in any city having upwards of twenty thousand inhabitants, it shall be lawful for the marshal of the United States for the district wherein said city shall be, to appoint as many special deputies as may be necessary to preserve order at any election at which representatives in Congress are to be chosen; and said deputies are hereby authorized to preserve order at such elections, and to arrest for any offence or breech of the peace committed in their view.

SEC. 7. *And be it further enacted*, That the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent.

Approved, July 14, 1870.

(U. S. Statutes at Large, Vol. XVI, pp. 254–256.)

CHAP. CCCXXII.—An Act To authorize the Appointment of Shipping-commissioners by the several Circuit Courts of the United States, to superintend the Shipping and Discharge of Seamen engaged in Merchant Ships belonging to the United States, and for the further Protection of Seamen.

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SEC. 29. That every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant ship or ships of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and shall have served said three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant ship of the United States, any thing to the contrary in any previous act of Congress notwithstanding; but such seamen shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

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Approved June 7, 1872.

(U. S. Statutes at Large, Vol. XVII, p. 268.)

CHAP. 5.—An Act To amend the Revised Statutes relating to naturalisation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

Approved, February 1, 1876.

(U. S. Statutes at Large, Vol. XIX, p. 2.)

REVISED STATUTES OF THE UNITED STATES. (1878.)

TITLE XXX.—*Naturalization.*

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and

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clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who has resided within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the State or Territory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship, has borne any hereditary title, or been of any one of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who has resided within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oaths of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. [Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred

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and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.]

SEC. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona-fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

SEC. 2168. When any alien who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths proscribed [a] by law.

SEC. 2169. The provisions of this Title shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed.

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[a] Error in the Roll; should be *prescribed*.

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SEC. 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

CHAP. 126.—An Act To execute certain treaty stipulations relating to Chinese.

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SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

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Approved, May 6, 1882.
(U. S. Statutes at Large, Vol. XXII, p. 61.)

CHAP. 165.—An Act Making appropriations for the Naval Service for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.

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* * * Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps. * * *

Approved, July 26, 1894.
(Vol. 28, U. S. Statutes at Large, p. 124.)

CHAP. 1012.—An Act To regulate the immigration of aliens into the United States.

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SEC. 39. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who has violated any of the provisions of this Act, shall be naturalized or be made a citizen of the United States. All courts and tribunals and all judges and officers thereof having jurisdiction of naturalization proceedings or duties to perform in regard thereto shall, on the final application for naturalization, make careful inquiry into such matters, and before issuing the final

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order or certificate of naturalization cause to be entered of record the affidavit of the applicant and of his witnesses so far as applicable, reciting and affirming the truth of every material fact requisite for naturalization. All final orders and certificates of naturalization hereafter made shall show on their face specifically that said affidavits were duly made and recorded, and all orders and certificates that fail to show such facts shall be null and void.

That any person who purposely procures naturalization in violation of the provisions of this section shall be fined not more than five thousand dollars, or shall be imprisoned not less than one nor more than ten years, or both, and the court in which such conviction is had shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

That any person who knowingly aids, advises, or encourages any such person to apply for or to secure naturalization or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not less than one nor more than ten years, or both.

The foregoing provisions concerning naturalization shall not be enforced until ninety days after the approval hereof.

Approved, March 3, 1903.
(32 U. S. Statutes at Large, p. 1222.)

CHAP. 3592.—An Act To establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the designation of the Bureau of Immigration in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said Bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the said Bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this Act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

SEC. 2. That the Secretary of Commerce and Labor shall provide the said Bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this Act upon such Bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

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That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however*, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration

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of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

SEC. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpœna for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

SEC. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

SEC. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or property of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

SEC. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further* That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in

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force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

SEC. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

SEC. 10. That in case the petitioner has not resided in the State, Territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence wthin the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside.

SEC. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this Act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization, and shall account for the same to the said Bureau whenever required so to do by such Bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said Bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

SEC. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars;

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and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpœnaing and paying the legal fees of any witnesses for whom he may request a subpœna, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said Bureau as in case of other fees to which the United States may be entitled under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if in the opinion of the said Secretary the business of such clerk warrants such allowance.

SEC. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

SEC. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as

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fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

SEC. 16. That every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

SEC. 17. That every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

SEC. 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

SEC. 19. That every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars.

SEC. 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who willfully neglects to render true accounts of moneys received by him for naturalization proceedings or who willfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the

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public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

SEC. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, or to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

SEC. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

SEC. 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

SEC. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect.

SEC. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three, of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed.

SEC. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION.

(Invalid for all purposes seven years after the date hereof.)

_____ _____, ss:

I, _____ _____, aged _____ years, occupation _____, do declare on oath (affirm) that my personal description is: Color _____, complexion _____, height _____, weight _____, color of hair _____, color of eyes _____, other visible distinctive marks _____; I was born in _____ on the _____ day of _____, anno Domini _____; I now reside at _____; I emigrated to the United States of America from _____ on the vessel _____; my last foreign residence was _____. It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to _____, of which I am now a citizen (subject); I arrived at the (port) of _____, in the State (Territory or District) of _____ on or about the _____

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day of _____ anno Domini _____; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) _____ _____.

Subscribed and sworn to (affirmed) before me this ____ day of _____, anno Domini _____.

[L. S.]

_____ _____

(Official character of attestor.)

PETITION FOR NATURALIZATION.

_____ Court of _____.

In the matter of the petition of _____ _____ to be admitted as a citizen of the United States of America.

To the _____ Court:

The petition of _____ _____ respectfully shows:

First. My full name is _____ _____.

Second. My place of residence is number _____ _____ street, city of _____, State (Territory or District) of _____.

Third. My occupation is _____.

Fourth. I was born on the _____ day of _____ at _____.

Fifth. I emigrated to the United States from _____, on or about the _____ day of _____, anno Domini _____, and arrived at the port of _____, in the United States, on the vessel _____.

Sixth. I declared my intention to become a citizen of the United States on the _____ day of _____ at _____, in the _____ court of _____.

Seventh. I am __ married. My wife's name is _____ _____. She was born in _____ and now resides at _____. I have _____ children, and the name, date, and place of birth and place of residence of each of said children is as follows: _____ _____; _____ _____; _____ _____.

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to _____, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since _____, anno Domini _____, and in the State (Territory or District) of _____ for one year at least next preceding the date of this petition, to wit, since _____ day of _____, anno Domini _____.

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the _____ court of _____ at _____, and the said petition was denied by the said court for the following reasons and causes, to wit, _____ _____, and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Commerce and Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated _____.

(Signature of petitioner) _____ _____.

_____ _____, ss:

_____ _____, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this _____ day of _____, anno Domini _____.

[L. S.]

_____ _____,

Clerk of the _____ Court.

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AFFIDAVIT OF WITNESSES.

_____ Court of _____.

In the matter of the petition of _____ _____, to be admitted a citizen of the United States of America.

_____ _____, ss:

____ _____, occupation _____, residing at _____, and _____ _____, occupation _____, residing at _____, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known _____ _____, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State (Territory or District) in which the above-entitled application is made for a period of _____ years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

_____ _____.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, nineteen hundred and _____.

[L. s.]

_____ _____,

(Official character of attestor).

CERTIFICATE OF NATURALIZATION.

Number _____.

Petition, volume _____, page _____.

Stub, volume _____, page _____.

(Signature of holder) _____ _____.

Description of holder: Age, _____; height, _____; color, _____; complexion, _____; color of eyes, _____; color of hair, _____; visible distinguishing marks, _____. Name, age, and place of residence of wife, _____, _____, _____. Names, ages, and places of residence of minor children, _____, _____, _____; _____, _____, _____; _____, _____, _____.

_____ _____, ss:

Be it remembered, that at a _____ term of the _____ court of _____, held at _____ on the _____ day of _____, in the year of our Lord nineteen hundred and _____, _____, who previous to his (her) naturalization was a citizen or subject of _____, at present residing at number _____ _____ street, _____ city (town), _____ State (Territory or District), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that __he was entitled to be so admitted, it was thereupon ordered by the said court that __he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the _____ day of _____, in the year of our Lord nineteen hundred and _____, and of our independence the _____.

[L. s.]

_____ _____,

(Official character of attestor).

STUB OF CERTIFICATE OF NATURALIZATION.

No. of certificate, _____.

Name _____; age, _____.

Declaration of intention, volume _____, page _____.

Petition, volume _____, page _____.

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Name, age, and place of residence of wife, ——, ——, ——. Names, ages, and places of residence of minor children, ——, ——, ——; ——, ——, ——,

5. Declarations of intention will be furnished in bound volumes (Form 2202, 2202A, or 2202B), as a court record, varying in size according to the amount of such business transacted by the court. In addition to the bound records, the duplicate and triplicate declarations of intention (Form 2203) will be furnished as loose sheets attached together and perforated, so that they can be readily torn apart, the triplicate to be given to the petitioner and the duplicate to be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization). Each bound record will consist of the original declarations of intention, paged in consecutive order and indexed. These volumes are to be numbered and will form a permanent record of the court.

6. The original of the petitions for naturalization will also be furnished in bound volumes (Form 2204, 2204A, or 2204B) of varying size, paged in consecutive order and indexed. The duplicate petitions (Form 2205) will be furnished as loose sheets and must be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) within thirty days after execution. The original petitions for naturalization must be filled out and signed in the bound volumes, and remain as a part of the permanent records of the office in which filed.

7. Certificates of naturalization (Form 2207) will be supplied in bound volumes consisting of original and duplicate certificates and stubs. Each original and duplicate certificate and the stub will be given the same serial number, the stub to the original certificate bearing a page number in addition to its serial number. Each book will bear a volume number, and the volume number and page of the stub must be given on the face of the certificate. The original certificate will be given to the petitioner in accordance with the final order of the court, and the duplicate shall be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) by registered mail within thirty days after the issuance of the original, the stub to the original constituting a part of the permanent records of the court.

8. No certificate of naturalization shall be issued to a petitioner until after the judge of the court granting naturalization has signed the order to that effect.

9. Clerks of courts will be furnished with requisition blanks (Form 2201) on which are listed, by number and title, all blank forms, including record and order books, to be used in the naturalization of aliens, and these forms must be obtained exclusively from the Department of Commerce and Labor (Division of Naturalization), none other being official. Manila envelopes or jackets (Form 2211) will be furnished to clerks in which to place the triplicate declaration of intention or the original certificate of naturalization before delivering them to the person making the declaration or to the person naturalized.

10. The first supply of blank forms will be furnished upon the written application of the clerks of courts having jurisdiction to naturalize aliens, accompanied, in the case of clerks of State courts, by authoritative evidence (preferably the certificate of the attorney-general of the State) that the courts of which such clerks are officers have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Subsequent supplies of such blank forms will be furnished the clerks of courts having jurisdiction to naturalize aliens upon the receipt by the Bureau of Immigration and Naturalization (Division of Naturalization) of requisitions made on Form 2201.

11. Clerks of courts when first making applications to the Bureau of Immigration and Naturalization (Division of Naturalization) for supplies of the blank forms required in the naturalization of aliens shall state, as to the two years next preceding the date of such application, the number of declarations of intention filed with them and the number of orders of naturalization made by their courts, respectively.

12. All applications for supplies of certificates of naturalization (Form 2207) should be accompanied by a statement of the number, if any, of certificates of naturalization issued by the clerks of courts making such applications since June 1, 1903, if such certificates failed to comply with the requirements of the immigration act of March 3, 1903.

13. Where the same court holds sessions at different places, whether a clerk is appointed at each of said places or the one clerk is required to transact the business of the court wherever it may sit, separate supplies shall be kept, in order to comply with the requirements of section 14 of the naturalization act, which provides that the bound declarations of intention and of petitions for naturalization shall be in chronological order.

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14. In every case in which the name of a naturalized alien is changed by order of court, as provided in section 6, the clerks of courts are required to report to the Bureau of Immigration and Naturalization (Division of Naturalization), when transmitting to it the duplicate of the certificate of naturalization of the alien whose name is changed, both the original and the new name of the said person.

15. Within thirty days after posting the notice (Form 2206) required by section 5 of the naturalization act of June 29, 1906, the clerk shall inform the Bureau of Immigration and Naturalization (Division of Naturalization), on Form 2209, of the date, as near as may be, for the final hearing of each and every petition for naturalization.

16. Applications for the issuance of declarations of intention (Form 2203) or certificates of naturalization (Form 2207), in lieu of declarations of intention or certificates of naturalization claimed to have been lost or destroyed, shall be made under oath to the clerk of the court by which any such declarations of intention or certificates of naturalization were originally issued, and shall contain full information in regard to the lost or destroyed papers, and as to the time, place, and circumstances of such alleged loss or destruction. The clerk shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the above-mentioned applications, together with such information as he may have bearing upon the merits thereof, for investigation, and no such paper so applied for shall be issued until the Bureau of Immigration and Naturalization (Division of Naturalization) reports the results of its investigation as to the merits of the application.

17. In every case in which the clerk of a court issues, in accordance with the preceding rule, a declaration of intention (Form 2203) or a certificate of naturalization (Form 2207), upon proof of the loss or destruction of the original, he shall make an entry on the original declaration, or on the stub of the original certificate of naturalization, as the case may require, showing the issuance of a new paper and the number thereof, and shall immediately thereafter forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the duplicate of any such paper so issued.

18. If an alien is physically unable to speak, that fact should be stated in his petition for naturalization in lieu of the statement, "I am able to speak the English language."

19. Within thirty days after the sitting of a court in naturalization cases, the clerk of such court shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization), on Form 2210, a list containing the name of each and every alien who, during such sitting of court, has been denied naturalization, and the reason or reasons for such denial.

20. The names of aliens making declarations of intention, or filing petitions for naturalization, must be entered in full in the appropriate places on the various blank forms, without abbreviation, and the signatures of such aliens must also be written out without abbreviation. Great care should be taken to get in every case the correct spelling of names.

21. Clerks of courts shall not receive declarations of intention (Form 2203) to become citizens from other aliens than white persons and persons of African nativity or of African descent.

22. Beginning with October 1, 1906, and on the first working day of each and every month thereafter, clerks of courts shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) duplicate declarations of intention and petitions for naturalization filed, and all duplicates of certificates of naturalization issued during the preceding month. Duplicate petitions for naturalization and duplicate certificates of naturalization shall be forwarded by registered mail; and duplicate declarations of intention shall be sent therewith, provided the combined weight of the documents does not exceed 4 pounds, otherwise they shall be forwarded in a separate package by unregistered mail. The clerks making such shipments are required to notify the Chief of the Division of Naturalization of the date thereof, by unregistered mail, on Form 2208, provided for that purpose. In transmitting petitions clerks of courts are directed to state that the names of the petitioners and their witnesses have been conspicuously posted, as required by law.

23. All fees provided for in section 13 of the act of June 29, 1906, collected by clerks of courts during any quarter of a fiscal year, shall be accounted for within thirty days after the close of such quarter, on Form 2212, provided for that purpose; and one-half of all moneys so collected shall be remitted to the

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Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, with said quarterly accounts. In cases where no naturalization business is transacted during any quarter, said blank form shall be forwarded as aforesaid, with the words "No transactions" noted thereon.

24. Under section 2166 of the Revised Statutes, an honorably discharged soldier, who is of the age of 21 years and upward, may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Also, under the provisions of the act of July 26, 1894, chapter 165, any alien, of the age of 21 years and upward, who has enlisted, or may enlist, in the United States Navy or Marine Corps, having been honorably discharged therefrom, after a residence of five years may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Clerks of courts are therefore instructed to appropriately note upon the petition of such discharged alien soldier or member of the Navy or Marine Corps, and upon the stub of the certificate of naturalization issued to him, in lieu of the information required thereon as to the filing of the declaration of intention, that the petitioner was an honorably discharged alien soldier, or member of the Navy or Marine Corps, and applied for citizenship under the said section 2166, or the act of July 26, 1894.

25. So far as is practicable, the clerks of courts having jurisdiction under the provisions of the naturalization laws will be furnished with appropriately addressed envelopes for communicating with the Bureau. When not using such envelopes, however, all communications, in addition to the other necessary address, should be plainly marked "Division of Naturalization."

26. Clerks of courts having jurisdiction to naturalize under the provisions of the act of June 29, 1906, are requested, in case the foregoing rules and regulations fail to remove from their minds doubt as to the proper course of action in any case, to write to the Chief of the Division of Naturalization, Bureau of Immigrantion and Naturalization, for instructions before taking such action.

V. H. METCALF, *Secretary.*

B.

EXTRATERRITORIALITY AS AFFECTING QUESTIONS OF NATIONALITY AND CITIZENSHIP.[a]

WHAT IS EXTRATERRITORIALITY?[b]

Grotius defines extraterritoriality as a situation in which "there are persons who retain to themselves their forum and territory and are as if they were not resident and are not subject to the laws of the people amongst whom they live."

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[a] The following works have been freely used in this section of the report: American Consular Jurisdiction in the Orient, by Frank E. Hinckley, Washington, D. C., 1906 (cited, Hinckley); Foreign Jurisdiction of the British Crown, by William Edward Hall, London, 1894 (cited, Hall); Consular Jurisdiction and Residence in Oriental Countries, by Francis Taylor Piggott, London, 1892 (cited, Piggott).

[b] The words "exterritoriality" and "extraterritoriality" are treated by some writers as identical; by others as indicating, the first, the privilege of ambassadors and their suites; the second, the treaty privilege under which consular jurisdiction has been established in the East.

Both these privileges are, however, more correctly described as "exterritorial;" the conditions of those to whom they are accorded as "exterritoriality." On the other hand, the government of these privileged persons, by their own authorities from home, is "extraterritorial." [Piggott—Exterritoriality, note, p. 3.]

Inasmuch as this report deals with the question rather from the extraterritorial point of view, as the words are used by Mr. Piggott, this term will be uniformly used without any attempt to distinguish with technical accuracy between exterritoriality and extraterritoriality.

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A learned French writer expressed exactly the same idea when he said that a foreigner enjoying extraterritoriality "always preserves his nationality and his civil and political rights as if he had never ceased to preserve his residence and his domicil" in his native land. (Ferand-Girard—Jurisdiction Francaise, vo. 2, p. 58.)

The views of the text writers are reaffirmed by the courts. The often-quoted language of Lord Stowell in the Indian Chief (3 Charles Robinson, page 12) defines extraterritoriality as—

> a rule of the law of nations, applying peculiarly to those countries, and [is] different from what prevails ordinarily in Europe and the western parts of the world, in which men take their present national character from the general character of the country in which they are resident; and this distinction arises from the nature and habit of the countries. In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted; and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation; they continue strangers and sojourners as all their fathers were—*Doris amara suan non intermiscuit undam*—not acquiring any national character under the general sovereignty of the country, and not trading under any recognized authority of their own original country, they have been held to derive their present character from that of the association or factory under whose protection they live and cary on their trade.

More recently Lord Watson, delivering the opinion of the Privy Council in the case of Abdul-Messih Farra (13 Ap. Cas., 440), stated that foreigners residing in semibarbarous countries in which extraterritorial jurisdiction is exercised form—

> an anomalous extraterritorial colony of persons of different nationalities having unity in relation to the (native) government, but altogether devoid of such unity when examined by itself; the consequence being that its members continue to preserve their nationality and their civil and political rights *just as if they had never ceased to have their residence and domicil in their own country.*

The same idea has been tersely and accurately expressed in the British foreign jurisdiction act (6 and 7 Victoria, Chap. XCIV), where in conferring the power to exercise extraterritorial jurisdiction the act provides:

> That it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any power or jurisdiction which Her Majesty now hath or may at any time hereafter have within any country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory.

In the language of Secretary Frelinghuysen, in the case of the grant of extraterritorial jurisdiction, "The national sovereignty of law is transferred bodily into a foreign soil and made applicable to citizens or subjects of its own nationality dwelling there." (Secretary of State to Hon. Wm. Windom, chairman Committee on Foreign Relations, U. S. Senate, April 29, 1882, Senate Mis. Doc. No. 89, 47th Cong.)

Extraterritorial jurisdiction is a survival of or reversion to the time when sovereignty was personal rather than territorial; when there was a King of the English rather than a King of England. It means the establishment of an *imperium in imperio*. It means the legal recognition of the existence of a foreign colony in a native state whose members remain, in the picturesque language of Lord Stowell, "immiscible," perpetuating their own institutions, governed by their own laws, and responsible to their own officers.

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ORIGIN OF EXTRATERRITORIALITY.

The doctrine of extraterritoriality is of ancient origin. The solidarity of modern civilization is of comparatively recent growth. National, racial, and religious distinctions, which usually had the same points of cleavage, assumed in former times an importance which seems hardly credible at present. Witness the old expressions "Greek and barbarian," "Jew and gentile," with all their implications. Even after the inauguration of the Christian era this situation remained. The hatred betwen the various sects of Christians was hardly less than that between Christian and Mohammedan. The cry "Better the Moslem than the Latin hat" sealed the fall of Constantinople. "In early times a consul in an European port habitually exercised quasi-judicial functions as between the merchants of his own country; he, at least in some places, composed differences between his own people and the local traders, and caused satisfaction to be made in cases of injury and even of violence done to the latter. Sometimes the powers with which consuls were invested appear to have been assumed independently of the territorial sovereignty. The letters patent given to Lorenzo Strozzi, by Richard III in 1485, seem to rest rather upon the general usage of nations than upon any antecedent grant of privileges from Pisa, where the consulate was to be established; they moreover contain a direct creation of a royal magistracy, and put under it not merchants only, but all subjects of the Crown in those parts." (Hall—Foreign Jurisdiction of the British Crown, pp. 132, 133.)

Historically it is undoubtedly true, as shown by numerous authorities quoted by Mr. Warden in his treatise on "The Origin and Nature of Consular Establishments," that the consul was originally an officer of large judicial as well as commercial powers, exercising entire municipal authority over his countrymen in the country to which he was accredited. But the changed circumstances of Europe, and the prevalence of civil order in the several Christian States, have had the effect of greatly modifying the powers of the consular office; and it may now be considered as generally true that, for any judicial powers which may be vested in the consuls accredited to any nation, we must look to the express provisions of the treaties entered into with that nation, and to the laws of the States which the consuls represent. (Dainese *v.* Hale, 91 U. S., p. 15–16.)

But especially was this peculiar doctrine of extraterritoriality developed in the Levant:

Such municipal colonies, organized by the Latin Christians, and specially by those of the Italian Republics, in the Levant, were administered, each by its *consuls*—that is, its proper municipal magistrates, of the well-known municipal denomination. Their commercial relation to the business of their countrymen was a mere incident of their general municipal authority. Such, also, at the outset was the nature of their political relation to other coexisting nationalities around them in the same country, and to that country's own supreme political or military powers. (7 Op. Atty. Gen., 342 at 346.)

During the two or three centuries before America was discovered the North Italian cities of Venice, Genoa, Pisa, and Florence, and other western cities of Marseille and Barcelona obtained from the Greek Christian rulers at Constantinople, and later from their Mohammedan conquerors, numerous charters for the protection of their commerce and for the exemption from the local government of their mercantile communities residing in the Levant. These charters, being set out in articles or *capitula*, acquired the name capitulations, a term now generally used to denote treaties with Turkey prior to the nineteenth century. (Hinckley—American Consular Jurisdiction in the Orient, pp. 2–3.)

(For a detailed account of the various decrees and capitulations under which this extraterritorial jurisdiction was enjoyed by the Italian and other western cities, see Hinckley, pp. 3–5.)

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With the fall of Constantinople and the coming of the Turk the necessity for extraterritorial privileges for western Christians in the Levant became more marked. In fact such extraterritoriality became absolutely essential for any continued commercial relations between the East and West.

When the Porte took possession of Turkey its population was largely made up of Christian nationalities, to which local self-government had been previously more or less assigned. These nationalities could not be expelled from Turkey without expelling the population by which its fields were tilled and its business exchanges conducted. On the other hand, the Porte could not undertake the municipal control of such nationalities, nor the settlement of their business differences, nor the supervision of their religious functions. Those who rejected Mohammed were to the Turk not merely enemies but Giaours—unclean persons—persons with whom the Turk could have no business or even social relations. Hence they were to be excluded from Turkish armies. While they might be taxed for imperial purposes, they were, so far as concerns their own particular interests, to determine themselves the taxes they were to bear. In Turkish schools their children could not be received, and therefore they were entitled to have schools of their own in which the teaching was to be distinctively Christian, and which were regarded as part of the system of diverse nationality recognized by ancient usage and essential to the existence of the Empire. And so it was with regard to the settlement of business disputes. As the Porte, or its courts, whatever they might have been, could not, without abandoning its fundamental doctrine of creed isolation, take cognizance of business disputes between unbelievers, these disputes must be settled by courts of the nationalities to which these unbelievers respectively belonged. And if questions of religion were involved, such disputes must be referred for determination to the head of the church to which the disputants belonged. (For. Rel. 1887, Mr. Bayard to Mr. Straus, pp. 1004–1095.)

It will thus be seen that extraterritoriality in its origin in the Levant, and specially in its development after the Moslem conquest, implied no inferiority on the part of the nation in derogation of whose sovereignty the extraterritorial privileges were granted. The western Christian and the Turk were immiscible and both frankly recognized this patent fact, each equally despising the other but accepting extraterritoriality as the only practical way to maintain commercial relations which were financially advantageous to both.

The capitulations in favor of the Italian Republics were gradually extended to the nations of modern Europe. Capitulations in favor of France, dated 1535, 1604, 1673, and 1740 are the basis for all others and for modern treaty rights. Similar capitulations in favor of England were granted in 1538 and 1675, of Holland in 1680, of Austria in 1718, and of Russia in 1783. (See Hinckley, p. 7.)

In the third decade of the nineteenth century treaties began to be negotiated between Turkey and the western powers declaring and supplementing the privileges granted by the capitulations. The treaty of the United States under which, as interpreted in the light of custom, our extraterritorial rights in Turkey are still held and exercised, was negotiated in 1830, although the United States had at a much earlier date negotiated treaties securing the privileges of extraterritoriality in various minor Mohammedan states, e. g., with Morocco in 1787, Tunis 1797, Tripoli 1805, Algiers 1815. Later on the system of extraterritoriality developed in Turkey was applied by the great powers and the United States in their relations to China, Persia, Japan, and various other Asiatic powers.

China conceded extraterritorial privileges to Great Britain in 1842 and 1843, to the United States in 1844, and Japan conceded civil extraterritoriality to the United States in 1857, while the treaty of

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1858 provided for the jurisdiction of both civil and criminal cases. Extraterritorial privileges were also conceded to Great Britain by Japan in 1858. (For a further account of the treaties securing extraterritorial privileges see Hinckley, p. 37, et seq.; see also, infra, Exhibit C.)

THE EXTENT AND NATURE OF EXTRATERRITORIAL JURISDICTION.

"The essence of political sovereignty is that it is legally omnipotent within its own territory, that it is legally powerless within the territory of another state." (Lewis, Foreign Jurisdiction, p. 1; see also, p. 8, quoted in British Rule and Jurisdiction Beyond the Seas, by Sir H. Jenkyns, p. 123; see also Papayanni *v.* Russian Steam Navigation Company (the Laconia), 2 Moore P. C. (N. S.), 161.)

All extraterritorial power exercised by one nation within the limits of another is in derogation of the sovereignty of the latter nation. It is an exception to the ordinary rule of international law that such treaties should, therefore, upon principle, be strictly construed. It must be remembered, however, as was said by Doctor Lushington in his discussion of Maltass *v.* Maltass (1 Robinson's Ecclesiastical Reports, p. 76):

> Now, in the construction of treaties of this description we can not expect to find the same nicety of strict definition as in modern documents such as deeds or acts of Parliament; it has never been the habit of those engaged in diplomacy to use legal accuracy, but rather to adopt more liberal terms. I think in construing these treaties (the Turkish Capitulations) we ought to look at all the historical circumstances attending them, in order to ascertain what was the true intention of the contracting parties, and to give the widest scope to the language of the treaties in order to embrace within it all the objects intended to be included. (Quoted in Piggott, pp. 85, 86; see also to the same effect In re Ross, 140 U. S., 153 at 480.)

In other words, it is a treaty which we are considering, and regard must be had to all the circumstances of the case, to the objects sought to be attained, and the evil sought to be remedied, as well as to the technical rule that treaties in derogation of sovereignty should be strictly construed. Inasmuch as extraterritoriality within a recognized state rests in every instance upon treaties, and both the powers granting and obtaining extraterritorial rights have been content to negotiate treaties of varying import, so that it can be confidently affirmed that no two treaties of any power are precisely alike, it is, of course not possible in a report of this nature to give an accurate and detailed description of the character and extent of the jurisdiction enjoyed under the general term of extraterritoriality. Moreover, it must always be remembered that although all extraterritorial power rests upon treaty provision in countries enjoying a constitutional government like England and the United States, it is necessary that statutory authority be conferred upon the officers of the government who are vested with the exercise of extraterritorial authority.

If it be asked what extraterritorial authority is exercised by the United States Government in any country the answer must be found first in the treaty conferring extraterritoriality, and second in the statutes of the United States providing for the exercise of exraterritorial power by American consular and diplomatic officers. That is to say, the question concerns itself first with international law and treaty, and second with our own municipal law. An interesting

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illustration of this principle may be found in the consideration of the right to deport or extradite, which is usually considered to be an incident of extraterritoriality conferred by the various treaties and which, for example, is freely exercised by Great Britain under treaties substantially similar in their provisions to those negotiated with the same countries by the United States. Yet, it has been repeatedly held by the Department of State that American consular and diplomatic officers are not authorized to extradite or deport, partly, no doubt, on account of a very reasonable doubt as to whether or not the right is conferred by the treaties, but specifically upon the ground that whatever may be our treaty rights, Congress has not conferred such power upon American consular and diplomatic officers. (See Hall, 177; Piggott, 101; Hinckley, 105; Moore's International Law Digest, vol. 4, p. 259; Moore on Extradition, vol. 1, pp. 100 and 106.)

It must be remembered also that extraterritorial power is exercised in countries of varying civilization and occupying various stages in international development. Such countries are roughly classified by Piggott in the following language:

> Briefly, then, between a colony and an absolutely independent country there are the following intermediate states:
>
> 1. Countries under protection.
> 2. Countries which have surrendered all judicial jurisdiction over the persons and property of subjects of other countries.
> 3. Countries in which this surrender is only partial, the sovereignty being retained in the mixed courts.
> 4. The countries in which this surrender is special, jurisdiction over many cases in which the subjects of other powers are concerned being retained.

No. 1 of Mr. Piggott's classification, countries under protection, is of little importance so far as the United States is concerned.

One other distinction ought to be made, namely, between countries, however uncivilized, which yet possess the international characteristics of a state and are recognized and dealt with as such by the United States Government through the negotiation of treaties and appointment of diplomatic representatives, etc., and utterly barbarous, unorganized, or uninhabited countries with which no such international relations are maintained. (See in this connection the special provisions conferring judicial authority upon American consular officers "at islands or in countries not inhabited by any civilized people or recognized by any treaty. (Rev. Stat., sec. 4088.)

No. 2 of Mr. Piggott's classification is the common case of extraterritoriality, and will be considered somewhat in detail. All general statements made in this report should be considered as applicable only to this variety of extraterritoriality. The situations which are dealt with in the ordinary treaty are thus classified by Mr. Piggott:

Criminal jurisdiction:

1. Crimes by subjects against subjects.
2. Crimes by subjects against nationals.
3. Crimes by subjects against foreigners.
4. Crimes by nationals against subjects.
5. Crimes by foreigners against subjects.

Civil jurisdiction:

6. Action brought by a subject against a subject.
7. Action brought by a national against a subject.
8. Action brought by a foreigner against a subject.
9. Action brought by a subject against a national
10. Action brought by a subject against a foreigner.

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The term "national" is used to denote a subject of the country in which the treaty rights are acquired.
"Subject," to denote a subject of the Queen.
"Foreigner," to denote a subject or citizen of a third power.

The methods in which jurisdiction of these various situations is distributed are thus described as applicable to the Levant by Attorney-General Cushing in an opinion in regard to the status of Americans in Turkey, rendered to the Secretary of State October 23, 1855:

On the general doctrine thus in force in the Levant, of the exterritoriality of foreign Christians, has been founded a complete system of peculiar municipal and legal administration, consisting of—
1. Turkish tribunals for questions between subjects of the Porte and foreign Christians.
2. Consular courts for the business of each nation of foreign Christians.
3. Trial of questions between foreign Christians of different nations in the consular courts of the defendant's nation.
4. Mixed tribunals of Turkish magistrates and foreign Christians at length substituted by common consent in part for cases between Turks and foreign Christians.
5. Finally, for causes between foreign Christians, the substitution also, at length, of mixed tribunals in place of the separate consular courts, this arrangement introduced at first by the legations of Austria, Great Britain, France, and Russia, and then tacitly acceded to by the legations of other foreign Christians. (7 Opinions of Atty. Gen., p. 565 at 569.)

In substantial agreement with this is the following statement of Hall:

It is everywhere conceded that the British consular courts shall judge in both civil and criminal matters where British subjects alone are concerned. It is admitted almost as universally in principle that where a British subject on the one hand, and a native of the territory or a subject of a third power on the other, are concerned, the proper forum is that of the party against whom pursuit is directed, so that in criminal cases the offender is tried by his own courts, and in civil matters the action is brought in the court of the defendant.

It will be noted that the only difference between these statements is as regards the jurisdiction of cases between subjects of the Porte and foreign Christians, which, according to Mr. Cushing's statement, is attributed to Turkish tribunals. Upon this point the statement of Hall represents the general rule, and as a matter of fact the practice in Turkey has tended to follow substantially the rule laid down by Hall, although theoretically the Turkish Government reserves a qualified jurisdiction over cases in which a Turkish subject appears either as plaintiff or defendant. To concede jurisdiction of all cases between natives and foreigners to local courts would be to give up one of the most important extraterritorial rights. In such cases the usual extraterritorial practice is, as stated by Hall, to try the action in the court of the defendant. Occasionally mixed tribunals are substituted. The reasons for this arrangement of jurisdiction are perhaps nowhere better stated than in the following passage from Hall:

That cases involving none but British subjects, and no interests other than British interests, should be judged solely by British courts follows almost inevitably from a recognition of the fact that Eastern conceptions of law differ too widely from those of the West to render it possible to subordinate persons belonging to the nations of European civilization to the full local jurisdiction; and if the subjects of a European state will settle their quarrels among themselves, and punish their own crimes efficiently, the Eastern state has no adequate motive for exercising in any point an authority which it has already

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surrendered in principle. That in mixed cases the court of jurisdiction should be the court of the defendant is at least natural. An accused person is taken to be innocent until he is shown to be guilty; the allegations in an action have to be proved against the defendant. As between the territorial state and a foreign country, the former can no more be expected to abandon subjects presumably guiltless of wrongdoing to a law of alien ideas and foreign in administration than the European state can be supposed willing to hand over its members to the laws and the courts of the East. As between two foreign countries, since the territorial law is acceptable to neither and the territorial state is disinterested, the consideration that wrongdoing has to be proved again operates, and preference is given to the courts of the person against whom proceedings are taken. (Hall, p. 148.)

The somewhat curious results of this system are thus described by Mr. Piggott:

The fundamental principle is that the quality of any act is to be governed by the law of the defendant's nationality, and therefore we have this curious result, that a man's duties are governed by his own law—his rights by the law of the person who wrongs him. The civil rights of a Japanese assaulted by an Englishman are corelative to the duties laid on Englishmen by English law. The civil rights of an Englishman assaulted by a Japanese are correlative to the duties laid on Japanese by Japanese law. And so assuming the jurisdiction of the respective courts properly founded, the rights of a Russian assaulted by an Italian are to be found declared by Italian law; and conversely those of an Italian assaulted by a Russian are declared by Russian law. (Piggott, p. 94.)*

As regards protective as distinguished from jurisdiction rights, the situation in extraterritorial countries may be summed up in the following passage from Hall:

Necessarily whatever forms of protection exist in Europe must exist also in the East. Less than the amount of protective supervision which is needed in countries of the same kind and degree of civilization can not suffice in countries of a civilization different in itself, and, from the point of view of the Western nations, of inferior quality. In saying this all has been said which for practical purposes is required. Whatever protective duties there are which go beyond the above range and are imposed upon British agents in Eastern states take a jurisdictional shape. (Hall, p. 134.)

CONSTITUTIONALITY.

The question of the constitutionality of the extraterritorial jurisdiction exercised by the United States has been raised a number of times, but may now be thought to be permanently at rest. (See an impromptu debate in 1881 in the Senate of the United States between Senator Carpenter, of Wisconsin, and Senator Hoar, of Massachusetts, Congressional Record, vol. 2, part 1, pp. 409–416, 46th Cong., 3d sess.)

That the framers of the Constitution entertained no doubt as to the constitutionality of this jurisdiction would appear from the fact that the two treaties coferring extraterritorial rights upon the United States were concluded almost simultaneously with the adoption of the Constitution, namely, the treaty with Morocco in January, 1787, and the treaty with France of November 14, 1788, negotiated by Jefferson, which contains a provision that all differences and suits between citizens of the United States in France should be determined

* No attempt can be made to enter into the particular cases of variance from the general principles here laid down. See as to the exceptional case of Real Estate in Turkey, Hall, p. 147, note 1. As to Mixed Tribunals in Egypt, see Hinckley, pp. 151-158. See also, upon the general subject of the extent of extraterritorial jurisdiction, Jenkyns, p. 24.

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by the consuls and vice-consuls, either by reference to arbitrators or by summary judgment without costs.

This most interesting treaty, conferring upon the United States extraterritorial powers in France, was submitted to the Senate by President Washington on June 11, 1789, and was unanimously accepted by that body on the 29th of the following July. (See Frelinghuysen report, Senate Mis. Doc., No. 89, 47th Cong., 1st sess., p. 14.)

The constitutionality of the extraterritorial legislation of Congress was upheld in the case of Forbes *v.* Scannel, 1859 (13 Cal., 242, at 250–263), and was finally set at rest in 1890 by the decision in the case of In re Ross (140 U. S., 453), in which Mr. Justice Field, in sustaining the constitutionality of the conviction of a defendant on trial for a capital offense in a consular court in Japan without a common-law jury, used the following language:

> By the Constitution a government is ordained and established "for the United States of America," and not for countries outside of their limits. The guarantees it affords against accusation of capital or infamous crimes, except by indictment or presentment by a grand jury, and for an impartial trial by a jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad. * * * The framers of the Constitution, who were fully aware of the necessity of having judicial authority exercised by our consuls in non-Christian countries, if commercial intercourse was to be had with their people, never could have supposed that all the guarantees in the administration of the law upon criminals at home were to be transferred to such consular establishments, and applied before an American who had committed a felony there could be accused and tried. They must have known that such a requirement would defeat the main purpose of investing the consul with judicial authority. While, therefore, in one aspect the American accused of crime committed in those countries is deprived of the guarantees of the Constitution against unjust accusation and a partial trial, yet in another aspect he is the gainer, in being withdrawn from the procedure of their tribunals, often arbitrary and oppressive, and sometimes accompanied with extreme cruelty and torture. (In Re Ross, 140 U. S., 453.)

The power to assume extraterritorial jurisdiction would seem to be properly referable either to the treaty-making power, the power to regulate foreign commerce, or to the general authority over international affairs entrusted by the Constitution to the National Government.

THE NECESSITY FOR EXTRATERRITORIAL JURISDICTION.

The United States has always regarded the exercise of extraterritorial powers as a necessary evil. It negotiated a treaty with Korea which contains the unique provision that "whenever the King of Chosen shall have so far modified and reformed the statutes and judicial procedure of his kingdom that, in the judgment of the United States, they conform to the laws, of course, of justice in the United States, the right of extraterritorial jurisdiction over United States citizens in Chosen shall be abandoned." (Treaty of May 22, 1888, art. 4.)

The treaty signed at Shanghai October 8, 1903, between the United States and China, reads in article 15 as follows:

> The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of Western nations, the United States agrees to give every assistance to such reform, and will also be prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing.

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The United States led the way in urging the abandonment of extraterritoriality in Japan and has always been inclined to take a conservative view of the powers conferred by the grant of extraterritorial privileges. (See question of extradition, supra.)

Doubtless President Grant was not alone in holding the sentiments which he expressed while in Constantinople on his trip round the world, when he said:

> How should we Americans like to see the Turks and other nations having their courts, their own systems of laws, and their own judges administering the laws of the country to which they belong in New York?
>
> The General had felt that there was an apparent injustice to Turkey. But he was careful to add that while these doubts had once troubled him, now that he had traversed the Ottoman Empire from Egypt to Constantinople he had come fully to understand why capitulations were necessary, and he entirely recognized that neither Americans nor the citizens of any other civilized power would consent to live in Turkey if they were not under the shelter and protection of such treaties. (Edwin Pears, barrister at law, on the naturalization treaty. For. Rel. U. S., 1887, p. 1112.)

It is believed that substantially all disinterested persons who have examined the question have been forced to the same conclusion.

> * * * the system of consular tribunals which have a general similarity in their main provisions, is of the highest importance, and their establishment in other than Christian countries, where our people may desire to go in pursuit of commerce, will often be essential for the protection of their persons and property. (In re Ross, 140 U. S., 480.)

It would seem that the following language of Attorney-General Cushing, contained in an opinion rendered July 14, 1855, to the Secretary of State, is still true, except so far as it refers to Japan:

> When the countries now Mohammedan shall be subjugated to the doctrines of the Roman law—whether by the arms of eastern or the arts of western Europe, is of secondary moment to us, provided it be done—and not until then, they can be admitted to the same reciprocal community of private rights with us which prevails in Christian Europe and in America. Until that event happens, Turkey and other Moslem states in Africa or Asia may, like China and Japan, enter into the sphere of our public law in the relation of government to government, but not in the relation of government to men. That full interchange of international right is admissible only among the nations which have unity of legal thought, in being governed by or constituted out of the once dissevered but since then partially reunited constituents of the Greco-Roman Empire. (7 Opinions Atty. Genl., 349.)

WHO ENJOY EXTRATERRITORIAL RIGHTS.

The general character and scope of the rights growing out of extraterritoriality has already been discussed. It remains to consider the persons who enjoy extraterritorial rights and are subject to extraterritorial authority. "It is evident," says Hall, "that the list of persons who are British subjects [in extraterritorial countries] can hardly be smaller than those elsewhere excepted, and that there may be good reasons for endeavoring to embrace a certain number of individuals who would not be regarded as British subjects in Europe or America. As a matter of fact, the claims of Great Britain in oriental states, although gradually diminishing, are still somewhat wider than those which she puts forth in the West." It is submitted, however, that with a few striking exceptions which will be noticed later, there is nothing in the fiction of extraterritoriality to vary the definition of citizenship established by the municipal laws of any

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nation. It would seem that Hinckley is more accurate when he points out that extraterritorial jurisdiction is apt to be extended beyond the strict limits of citizenship. "So far as extraterritorial privileges are involved, American nationality includes all persons, whatever their civil status, who owe allegiance to the United States either as citizens by birth or by naturalization or as native inhabitants of the insular possessions, or as seamen on American ships, or as assistants or guards in legations and consulates, or, to a limited extent, as employees of American citizens in oriental countries." (Hinckley, p. 78.)

Protégés.—Formerly, especially in Turkey, the various powers possessing extraterritoriality were accustomed to extend their protection to a large and somewhat indefinite number of so-called protégés, who placed themselves under the protection of their consulates by registering therein and submitting to the consular jurisdiction. (See legal opinion of Edwin Pears, For. Rel., U. S., 1887, pp. 1109–1113; Hinckley, p. 83.) This system naturally excited objection on the part of the native governments, and has been in recent times steadily discouraged on the part of all the powers, especially by the United States and Great Britain. (See the convention limiting the rights of protection in Morocco concluded between all the great powers and Morocco in 1880.)

As will be seen from the passage from Hinckley above quoted, the protégés of the American consulates are now restricted to assistants or guards in legations and embassies, or, "to a limited extent, to the employees of American citizens," and it is very doubtful whether or not the statutes of the United States authorize the assertion of criminal jurisdiction over such protégés who are not American citizens. (For cases in which extraterritorial rights were claimed for dragomen attached to consulates in Turkey, see For. Rel. 1898, p. 1109; For. Rel. 1900, p. 920.)

Seamen.—A class of persons not necessarily citizens of the United States, who are yet subject in all respects to the extraterritorial jurisdiction of the United States and entitled to all the extraterritorial rights pertaining to American citizens, are seamen. (Hinckley, p. 87.) The law and practice of the United States and England differ as regards seamen in this respect—in England punitive jurisdiction does not go hand in hand with protective jurisdiction. England gives equal protection to seamen upon English vessels, whether or not they are British subjects, "but British courts can only exercise criminal jurisdiction over British subjects and persons to whom the privileges of subjects have been regularly extended. They consequently have no power to try a foreign seaman belonging to a British ship for any offense committed within or without the territorial jurisdiction. He must be handed over to the consular authority of the nation of which he is a subject." (Hall, p. 142.)

This divergence of views led to a diplomatic correspondence between the United States and Great Britain in 1881 concerning the right to exercise jurisdiction over John Ross, a British subject who was a seaman on an American vessel, for a crime committed on the ship in the harbor of Yokohama. The State Department maintained that jurisdiction, according to American law, inhered in the American consular court, and from this decision the English Government did not dissent. The Ross case finally reached the Supreme

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Court of the United States in In re Ross (140 U. S., 453). The views expressed by the Department were affirmed by the court, which quoted from the communication of the Secretary of State to the British Government, and said:

> The national character of the petitioner, for all the purposes of the consular jurisdiction, was determinable by his enlistment as one of the crew of the American ship *Bullion*. * * * He could then insist upon treatment as an American seaman, and invoke for his protection all the power of the United States which could be called into exercise for the protection of seamen who were native born. He owes for that time to the country to which the ship on which he is serving belongs a temporary allegiance, and must be held to all its responsibilities.

American nationals.—The inhabitants of our insular possessions, the Philippines and Porto Rico, appear not to be citizens in the constitutional sense of the word. They are, however, subjects in an international sense, and have, perhaps, not inappropriately been called American nationals. It seems clear that they are within the scope of the treaties and the acts of Congress passed in furtherance thereof, and are not only entitled to full protection, but, it would seem, are subject to criminal procedure before American extraterritorial courts.

Missionaries.—A very great deal of the diplomatic correspondence of the United States in regard to extraterritorial rights has arisen out of the denial of such rights to American missionaries in the Orient. Although many of the European nations have special relations with certain ecclesiastical organizations and act as the representative and protector of these organizations in the Orient, and even Great Britain and Germany are traditionally obligated to defend the great faiths which are so closely connected with their national history, the United States may be said to have a "really distinctive policy—that of protecting American missionaries to the same degree as other American citizens." (Hinckley, p. 110; see for a general discussion of the rights of American missionaries in Turkey, by Mr. Bayard, F. R., 1897, p. 1094; by Mr. Blaine, F. R., 1891, p. 765; by Mr. Foster, F. R., 1892, p. 609; by Mr. Olney, F. R., 1895, part 2, pp. 1256, 1461. See also F. R., 1885, pp. 153, 163; F. R., 1876, p. 46; F. R., 1882, p. 137; F. R., 1888, part 1, p. 270; F. R., 1895, part 1, p. 196.)

It should be noted, however, that Turkey and China, the former by the treaty of Berlin and the latter by article 29 of her treaty with the United States of 1858, and by the recent treaty of October 8, 1903, have obligated themselves not to discriminate against their own subjects on account of the adoption of the Christian religion, but it must not be thought that on this account extraterritorial rights, as such, extend in the slightest degree to native converts to Christianity. (See Hinckley, p. 86.) As will be noted later American missionaries constitute in a peculiar degree a "distinctive American community," enjoying extraterritorial rights in which American citizenship may be handed down from father to son without restriction as to those whose fathers have never resided in the United States. It follows naturally from this ruling that the issuance of passports to missionaries in extraterritorial countries "whose residence there was continuous and practically permanent, and who could not allege any definite intention of returning to and residing in the United States," has been directed. (See Van Dyne's Citizenship, p. 281; Hunt's American Pass-

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port, p. 209; Mr. Gresham to Mr. Runyon, November 1, 1894; Mr. Everett to Mr. Marsh, February 5, 1853; 2 Whart. Int. Law, p. 260. On the general subject of missionaries and their extraterritorial rights, see Hinckley, pp. 108 to 125.)

Double nationality.—The same questions of double nationality which have been discussed in the earlier part of this report also arise in connection with the doctrine of extraterritoriality.

A natural-born subject of Great Britain, for example, who is also by the law of another State invested with its nationality, may be claimed by either of the two countries. In Europe no difficulty would be likely to make itself felt in a third country. Neither State would have any interest in opposing the choice of the individual; he would obtain protection from the country of his preference. But so soon as jurisdiction is delegated by the territorial State the aspect of the case is changed. The individual by placing himself under one jurisdiction rather than another may obtain a personal advantage, to the disadvantage of one of the two States to which he may be ascribed or to the disadvantage of persons who are its subjects. Both countries may have a strong interest in urging their claim to his allegiance. In such circumstances no legal solution of the difficulty seems possible. In third States the right to him of each country is equal to that of the other. There is no such reason on either hand for yielding as proffers itself when a claim based upon origin is met by a like claim strengthened by the presence of the individual on the territory of one of the claimants. Unless diplomatic arrangement be possible, there is no escape from a flat conflict of jurisdiction. A similar difficulty evidently occurs when a person of double nationality is accused of crime. (Hall, p. 140.)

A similar situation would arise if a naturalized citizen of America, resident in some oriental country other than the country of his origin, were claimed as a citizen by the country of his origin. In the case of Great Britain, inasmuch as the spirit of the naturalization act of 1870 "obviously is that acquired nationality has a lower claim to recognition than nationality of origin," this claim would probably be conceded. (See Hall, p. 141.) In the case of the United States, however, where the statute of Congress expressly directs that the same protection be given to naturalized as to native-born citizens, a flat contradiction of jurisdiction would result.

Good offices toward citizens of other countries.—The consuls of the United States in extraterritorial countries, like the consuls of other countries, are frequently called on to extend their good offices by temporarily or permanently taking under their protection citizens of other countries. The British and American consuls in the interior of Turkey frequently exchange their good offices for the protection of missionaries, and this Government has frequently, at the request of the Government of Switzerland, directed its consular officers to extend their protection to citizens of that country. In general this extension of good offices has been assented to by Turkey, even to the extent of permitting the consuls of the nation giving protection to proceed to try citizens of another country to whom they have extended protection for criminal offenses.

This Government, however, has refused to exercise such jurisdiction without the express assent of the country of which the person interested is a citizen, and has never, in fact, authorized such assumption of jurisdiction in a criminal case. (See Hinckley, pp. 88 and 89; F. R., 1873, part 1, p. 139; F. R., 1902, p. 6 and p. 234; Moore's International Law Digest, § 290.) China appears never to have given her assent to such substituted jurisdiction.

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EXTRATERRITORIAL PRIVILEGES FOR PARTICULAR PLACES.

The following passage from Hall suggests a peculiar phase of extraterritoriality and states the extent and nature of the particular privileges enjoyed by England in Turkey and Persia. The same privileges are enjoyed by the United States. Similar privileges are enjoyed in other extraterritorial countries.

In some countries a certain degree of protection is formally conceded to things and places as well as to persons. In the Ottoman Empire, and in the territories to which the capitulations extend, the local police are forbidden to enter by force a house inhabited by a British subject without giving notice to the ambassador or consul, if either be within reach, so that an agent of the British Government may be present to see that no irregularity is committed; where a criminal is caught *flagrante delicto*, or necessity of some kind interferes with previous notice, a consul must be made acquainted with the fact of arrest within four and twenty hours after its occurrence. In Persia formal authorization from the minister or consul is required.

ACQUISITION OF CITIZENSHIP.

The great majority of the questions relating to the acquisition of citizenship arising in extraterritorial countries naturally depend upon exactly the same principles as do the questions arising in this country and in the civilized nations abroad, and the rulings of the Department have simply followed the decisions of the courts in similar cases arising in civilized countries. For example: It has been held that imperfect or defective naturalization can no more give the rights of American citizenship, and hence of extraterritoriality, in China or Turkey, than they can confer the right to American protection in France or England. (See Foreign Relations, 1887, p. 190–210; 1896, p. 91, see, also, as to China and Turkey, Foreign Relations, 1885, pp. 849–855.)

As regards one or two questions, however, in which the Department has followed the ordinary rulings, the situation in extraterritorial countries is so different as to make the ruling worth noting. For example: the Department has held that residence in an extraterritorial country can not be counted toward the five years' residence required for naturalization, and this ruling was made in the case of the American dragoman attached to the legation at Constantinople and therefore peculiarly within the extraterritorial jurisdiction of the United States, as well as within the employ of the Government. (See Mr. Terrell to Mr. Gresham, October 14, 1893, Foreign Relations, 1893, p. 692; and Mr. Gresham to Mr. Terrell, November 2, 1893, Foreign Relations, 1893, p. 701.)

Again, in the same case, the Department held that the treaties and statutes conferring judicial authority upon American ministers in extraterritorial countries do not create a court competent to naturalize according to the requirements of the naturalization laws.

Section 2165 of the Revised Statutes is explicit in requiring the application for admission to citizenship to be made before a circuit or district court of the United States or a district or a supreme court of the Territories or a court of record of any of the States.

Notwithstanding the judicial powers conferred on some of our ministers abroad, it is plain that they are not within any of the descriptions of courts above mentioned, nor is it possible to consider Mr. Gargullo as having been con-

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structively in this country during the past five years merely because he has been in the employment of this Government in Turkey during that time. The friction of extraterritoriality can not be carried to this extent. (Foreign Relations, 1893, p. 701.)

Marriage.—The question of the acquisition of citizenship through marriage to an American citizen presents no peculiarities growing out of the law of extraterritoriality. Reference may be made in this connection to the agreement between Germany and China, made in 1888, whereby the marriage of a Chinese woman to a German was declared to make the Chinese woman subject to German jurisdiction, and which, notwithstanding the statutory provision against the naturalization of Chinese, was said by Secretary Bayard would probably "assist in determining the status in China of the Chinese wife of an American citizen, assuming the marriage to be consensual and monogamous." (Foreign Relations, 1888, p. 349. See, also, pp. 319, 347, 683; and Hinckley's American Consular Jurisdiction in the Orient, p. 80.)

Such a marriage, however, it would seem, could only affect the status of the Chinese wife of an American citizen so far as to bring her within the extraterritorial jurisdiction of the United States. It could not confer citizenship in the presence of Revised Statutes, sec. 1994.

LOSS OF CITIZENSHIP.

According to section 1999, Revised Statutes, expatriation is a natural and inherent right, and whatever may have been the earlier doctrine on the subject of indelible allegiance, there would seem to be no question at the present time that an American citizen can divest himself of his American citizenship.

It remains to notice any peculiarities affecting expatriation in extraterritorial countries. In the first place, the distinction above referred to between a country of imperfect civilization, which possesses the general attributes of a state and is regarded by other nations as an international person, and a barbarous unorganized country not possessing such characteristics, must be borne in mind. Although it is the general rule, in view of the declared position of the United States Government, that an American citizen loses his American citizenship upon becoming invested with the citizenship of a foreign country, it would seem that no ceremony of adoption into a barbarous tribe, and no length of residence in a barbarous state, not recognized as an international person, can serve to release an American citizen from his responsibilities to his country, and it would seem that the mere fact that the United States may make treaties or agreements with such barbarous community would not necessarily indicate that such a community was a state in the sense of being able to release an American citizen from his allegiance to the United States by conferring upon him its own citizenship. Such is believed by Hall to be the correct doctrine, even under the British naturalization act of 1870, which expressly permits British subjects to assume the nationality of a foreign state. (Hall, pp. 130 and 131.)

In the case of an Eastern state in which extraterritorial privileges are enjoyed, but which is, nevertheless, regarded as a state theoretically in the full sense of the word, naturalization either in accordance with a naturalization law, such as that of Turkey, or in

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accordance with any formula deemed sufficient by the oriental state to confer its citizenship, would be doubtless held to divest an American citizen of his nationality. (Hall, p. 125.) When, however, we consider the question of expatriation through prolonged residence abroad, a wide distinction exists between all countries in which the United States possesses extraterritorial jurisdiction, whether they be states in an international sense or not, and countries in which no such jurisdiction exists.

The circumstances which work expatriation as applied to residents in countries in which no extraterritorial jurisdiction exists have been defined by Mr. Hamilton Fish, as "the quitting of one's country, with an abandonment of allegiance and with the view of becoming permanently a resident and citizen of some other country, resulting in the loss of the party's preexisting character of citizenship." Thus, a person "may reside abroad for purposes of health, of education, of amusement, of business, for an indefinite period; he may acquire a commercial or civil domicile there, but if he do so sincerely and bona fide animo revertendi, and do nothing inconsistent with his preexisting allegiance, he will not thereby have taken any steps toward self-expatriation. But if, instead of this, he permanently withdraws himself and his property and places both where neither can be made to contribute to the national necessities, acquires a political domicile in a foreign country, and avows his purpose not to return, he has placed himself in the position where his country has the right to presume that he has made his election of expatriation." But this ruling does not apply to residents in extraterritorial regions except in the case of naturalized citizens returning to the country of their origin.

The important rulings of the Department on this subject grew out of the application for the registration of two children in the American consulate at Smyrna. One child was the grandchild of an American citizen, the father of the child never having resided in the United States within the meaning of section 1993; the other child was the grandchild of a naturalized Turk, his father being in like case. On March 30, 1887, the Department wrote Consul Emmet approving his action in refusing the registration of these children on the ground that they had lost all claim to American citizenship. Later, however, after the consideration of the very able protest prepared by several prominent American citizens residing in Smyrna, and after a careful study of the whole question of extraterritoriality (see instruction of Department to Mr. Straus, Apr. 20, 1887, Foreign Relations, 1887, p. 1094), the Department changed its position so far as concerned the grandchild of the native born American citizen and arrived at the following conclusions:

(1) Persons who are members in Turkey of a community of citizens of the United States of the character above described do not lose their domicile of origin, no matter how long they remain in Turkey, provided that they remain as citizens of the United States, availing themselves of the extraterritorial rights given by Turkey to such communities and not merging themselves in any way in Turkish domicile of nationality.

(2) The American domicile they thus retain they impart to their descendants so long as such descendants form part of such distinctive American communities, subject to the above proviso.

(3) Section 1993 of the Revised Statutes, providing that "the rights of citizenship shall not descend to children whose fathers never resided in the United States," does not apply to the descendants of citizens of the United States members of such communities. Such descendants are to be regarded, through their

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inherited extraterritorial rights recognized by Turkey herself, as born and continuing in the jurisdiction of the United States.[a] That this is the construction to be given to section 4125 of the Revised Statutes, coupled with our treaty of 1830 with Turkey, is fully shown by the above-mentioned instruction of April 20, 1887, to which I again refer as binding you in this relation.

Not finding these conclusions sufficiently definite, the memoralists, through Consul Emmet, asked the Department for further information regarding their status. This request was made in a letter of Consul Emmet, December 14, 1899, which read in part as follows:

The question which presents itself and leaves the aforesaid petitioners in doubt is whether they, as private citizens pursuing their own business and not in any particular manner subserving American interests or identified therewith, can be considered "as members of continuous communities of American nationality existing in Turkey for business or religious purposes," and therefore entitled to American protection.

* * * * * * *

To designate an American community in this section one would be obliged to draw the line of demarcation around the American missionaries and stop there. They are in every sense American, by birth and feelings, habits of living, and thought, national pride in the observance of holidays, etc., whereas the balance who constitute the *American colony* are so intermixed with other nationalities, by marriage and family ties, as to obliterate their American individuality, until trouble obliges them to proclaim their citizenship and seek protection through this consulate.

To this the Department replied:

To this I have now to add that the Department considers as citizens of the United States all non-Mahometans descended from citizens of the United States (not naturalized Turks), whose parents or prior ancestors settled in Turkey for religious or business purposes, and who themselves remain non-Mahometans, retain and proclaim their American nationality, and are recognized by Turkish authorities as citizens of the United States.

It will be observed that the Department in this passage refused to extend the exception of Revised Statutes 1993 to descendants of naturalized foreigners who return to the country of their origin, although their country be one in which the United States exercises extraterritoriality.

This attitude receives confirmation from the position of the Department in regard to the child of a native of Morocco naturalized in the United States who had returned to his native country. In this case the Department not only approved the action of Consul-General Burke in refusing to regard the child as an American citizen, but proceeded to apply to the case of the father the ordinary doctrine of expatriation as applicable to a naturalized citizen returning to the land of his nativity, and refused to make any exceptions on account of the extraterritoriality enjoyed by the United States in Morocco. Article 15 of the treaty between the United States and Morocco should, perhaps, be noted in this connection, although the Department purposely decided the case without reference to the treaty. Article 15 is as follows:

Any subject of Morocco who has been naturalized in a foreign country, and who shall return to Morocco, shall after having remained for a length of time equal to that which shall have been regularly necessary for him to obtain such naturalization, choose between entire submission to the laws of the Empire and the obligation to quit Morocco, unless it shall be proved that his naturalization

[a] A similar British statute seems to be more strictly construed. See Hall, p. 125.

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in a foreign country was obtained with the consent of the Government of Morocco.

Foreign naturalization heretofore acquired by subjects of Morocco according to the rules established by the laws of each country, shall be continued to them as regards all its effects, without any restriction.

See also in this connection Foreign Relations 1887, page 1131, in which the same doctrine is again announced as regards Turkey.

The result of these various cases would seem to be that while the Department recognizes an exception to the general language of section 1993, as regards the descendents of American citizens in general, living in countries in which the United States exercises extraterritorial powers, it refuses to extend this exception to the children of naturalized Americans returning to the country of their origin. See the concluding language of the instruction regarding passports for persons residing or sojourning abroad, dated March 27, 1899, which reads as follows:

The status of American citizens resident in a semibarbarous country or in a country in which the United States exercises extraterritorial jurisdiction is singular. If they were subjects of such power before they acquired citizenship in the United States, they are amenable, upon returning, to the same restrictions of residence as are laid down in the beginning of this instruction, and for the same reasons; but if they are not in that category, their residence may be indefinitely prolonged, since obviously they can not become subjects of the native government without grave peril to their safety. The Department's position with respect to these citizens has uniformly been to afford them the protection of a passport as long as their pursuits are legitimate and not prejudicial to the friendly relations of this Government with the government within whose limits they are residing; and the Department has even held that persons who are members of a distinctly American community in Turkey and avail themselves of the extraterritorial rights given by Turkey to such communities may inherit their rights as American citizens, and that section 1993 of the Revised Statutes of the United States which provides that "the rights of citizenship shall not descend to children whose fathers never resided in the United States," is not applicable, such descendents being regarded, through their inherited extraterritorial rights recognized by Turkey herself, as born and continuing in the jurisdiction of the United States. (For. Rel. 1887, 1125.)[a]

The restrictions in regard to the residence of a naturalized American citizen in the country of his origin to which the Department refers in the above quotation, as applicable alike to countries in which the United States exercises extraterritorial jurisdiction and in which it does not, are thus explained in the same instruction of the Department:

A naturalized citizen who returns to the country of his origin and there resides without any tangible manifestation of an intention to return to the United States may therefore generally be assumed to have lost the right to receive the protection of the United States. His naturalization in the United States can not be used as a cloak to protect him from obligations to the country of his origin while he performs none of the duties of citizenship to the country which naturalized him.

Marriage.—In the case of an American woman who marries a foreigner residing in extraterritorial jurisdiction, it is believed that the same rules apply as in the case of an American woman who marries a foreigner residing in the United States, at least so far as American law is concerned. There remains, of course, always a possibility of a double nationality and a conflict of authority with the nation to which the husband belongs, under certain circumstances.

[a] See No. 172, July 30, 1901, from the consul-general at Constantinople, and No. 44, March 13, 1901, from the consul at Harput.

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EXHIBIT A.

COUNTRIES IN WHICH THE UNITED STATES EXERCISES EXTRATERRITORIAL JURISDICTION.

[For the treaty provisions regulating extraterritoriality in the countries marked with an * see infra, Exhibit C.]

CHINA.*

BORNEO.—A treaty was made with the Sultan of Borneo June 23, 1850, and it is still in force, although the island is now entirely included within British and Dutch protectorates. (Hinckley, 39.)

* * * As to other protectorates, namely, Borneo, whose entire territory was converted into the British protectorate of North Borneo, and the Dutch protectorates of East, South, and West Borneo in 1891, and Tonga, which was made a British protectorate in 1899 and at length became essentially a British possession in 1904, the United States has taken no action whatever toward relinquishing its treaty rights of jurisdiction. But in view of the practice of European governments and of the recent suspension of jurisdiction in the leased areas of north China, it may be assumed that the United States would either retain, suspend, or relinquish jurisdiction in a protectorate according to the extent to which the protecting power actually undertook the administration of justice in it. Another determining factor in European practice is the degree of reciprocity shown with respect to withdrawing jurisdiction in protectorates; for example, the British withdrawal of jurisdiction from Madagascar in return for French withdrawal from Zanzibar, and the British withdrawal of jurisdiction from Samoa in return for German withdrawal of it from Tonga. (Hinckley, 181, 182; see Tonga, infra.)

KOREA.—The fourth article of the American treaty contains a provision which is thought not to have been inserted in any earlier treaty with any oriental State, namely, that extraterritoriality shall be relinquished when, in the judgment of the United States, the reform of the laws and of the administration of justice in Korea justify relinquishment; a similar provision is made in the protocols appended to the British and French treaties. (Hinckley, 39.)

MASKAT.—A treaty with Maskat, another Mohammedan State, was negotiated in 1833 by Edmund Roberts, a sea captain, commissioned by President Johnson. Maskat then extended from the Persian Gulf southward along the coasts of Africa, but to-day it comprises only a small area at the mouth of that gulf. (Hinckley, 20.)

MOROCCO.—The protégé system in Morocco was regulated by a convention signed by several powers at Madrid in 1880. In 1904 Great Britain recognized the predominating influence of France in Morocco. (Hinckley, 20.)

PERSIA.*

SIAM.*

TONGA.—On October 2, 1886, a treaty with the Tonga Islands was concluded. These islands became a protectorate of Great Britain in 1899, and in 1904 the native authorities transferred the legal and financial administration to the British Government. (Hinckley, 39; see Borneo, supra.) As a matter of fact, the United States never

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exercised any of its jurisdictional rights under the treaty with Tonga of October 2, 1886. (See Hinckley, n. 2, p. 182.)

TRIPOLI.—Italian influence tends to predominate in Tripoli. (See Hinckley, p. 20.)

TURKEY and EGYPT.*

The many changes in the international relations of the oriental States with which the United States has, during the course of the past century, negotiated treaties of extraterritoriality have greatly reduced the number of those treaties and caused some of them, though remaining in force, to be modified in operation. The extraterritorial jurisdiction has been formally relinquished in Algiers and Tunis, Servia, Madagascar, and Japan, and a portion of Samoa, and impliedly relinquished in Roumania; it is suspended as to certain civil cases in Egypt, and fully suspended within the areas of North China leased to European powers; it is subject in greater or less degree to modification or suspension in the protectorates of Zanzibar, Borneo, and Tonga, and in the special spheres of influence of France and Italy extending over Morocco and Tripoli; it is still exercised in Persia, Maskat, Siam, Korea, China, and Turkey; and in Turkey and China it is frequently exercised and of great importance. (Hinckley, 40.)

EXHIBIT B.

COUNTRIES IN WHICH EXTRATERRITORIAL JURISDICTION ONCE POSSESSED BY THE UNITED STATES HAS BEEN RELINQUISHED.

ALGIERS.—In 1830 jurisdiction in Algiers ceased with the military occupation of that country by France, which subsequently developed into annexation. (Hinckley 20; compare Mahoney *v.* U. S., 10 Wall. (U. S.), 62.)

JAPAN.—Extraterritorial privileges were secured in Japan by the treaties of June 17, 1857, and July 29, 1858. The privilege of revision in 1872 or later was reserved, but the extraterritorial provisions remained in force until July 16, 1899, when extraterritoriality was abandoned according to the provisions of the treaty of November 22, 1894. (Hinckley, 37, 38, 183, 188; see also Foster, American Diplomacy in the Orient, Boston, 1903, pp. 344 to 364.)

MADAGASCAR.—The native Government of Madagascar entered into a treaty with the United States on February 14, 1867, and made a new treaty on May 13, 1881, which defined consular judicial prerogatives with extraordinary detail. Since 1896 Madagascar has been a colony of France. (Hinckley, 38; see also Hinckley, p. 179.)

ROUMANIA.—The Roumanian treaty contains no explicit renunciation of extraterritoriality. It has, however, presumably been relinquished by implication. (See Hinckley, p. 183.)

SAMOA.—On January 17, 1878, a treaty was made with Samoa. This treaty was negotiated at Washington and signed by the Secretary of State himself. The Samoan Islands were divided, however,

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by a treaty between the United States, Great Britain, and Germany, December 2, 1899, under which the rights and claims of Great Britain were renounced as to the entire group of islands and the rights and claims of the United States and Germany restricted to separate groups of the islands. (Hinckley, 39.)

SERVIA.—The Servian treaty (1881) made a qualified renunciation under which the United States retained jurisdiction, except as to real estate, in mixed cases involving other foreigners whose governments should not have renounced jurisdiction. This provision had only a temporary effect, for jurisdiction was soon relinquished by Austria, France, and Great Britain, and in 1886 Servia and Turkey entered into a convention mutually relinquishing extraterritoriality each in the territory of the other. (See Hinckley, p. 183.)

TUNIS.—The Tunis treaty of 1797 was nominally in force until March 15, 1904, when the United States, by special treaty, recognized the protectorate over Tunis which France had established in 1881.

ZANZIBAR.—Having gained independence from Maskat, the rulers of the island of Zanzibar and the adjacent mainland made a treaty of extraterritoriality with the United States in 1886. Since then, excepting a few mainland ports leased to Italy, Zanzibar has become a British protectorate, and by convention of February 5, 1905, with Great Britain extraterritoriality therein has been relinquished by the United States. (Hinckley, 20.) But the convention relinquishing jurisdiction is not to go into effect until other nations shall have likewise renounced their extraterritorial privileges. The treaty of 1886, in which extraterritorial privileges were secured, is therefore technically still operative and is quoted, infra, among the treaties in force. (See Hinckley, p. 181.)

EXHIBIT C.

TREATY PROVISIONS GRANTING EXTRATERRITORIAL JURISDICTION TO THE UNITED STATES, IN FORCE JANUARY 1, 1907.*

I.—MOROCCO.

Treaty of January 25, 1787.

ART. XX. If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other, the consul shall decide between the parties, and whenever the consul shall require any aid or assistance from our Government to enforce his decisions it shall be immediately granted to him.

ART. XXI. If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial, and if any delinquent shall make his escape the consul shall not be answerable for him in any manner whatever.

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* The excerpts here given are taken from Hinckley's "American Consular Jurisdiction in the Orient," although the arrangement is somewhat different.

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II.—MOROCCO.

Treaty of September 16, 1836.

ART. XX. If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other, the consul shall decide between the parties, and whenever the consul shall require any aid or assistance from our Government to enforce his decisions it shall be immediately granted to him.

ART. XXI. If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial, and if any delinquent shall make his escape the consul shall not be answerable for him in any manner whatever.

III.—TRIPOLI.

Treaty of November 4, 1796.

ART. IX. The commerce between the United States and Tripoli, the protection to be given to merchants, masters of vessels, and seamen, the reciprocal right of establishing consuls in each country, and the privileges, immunities, and jurisdictions to be enjoyed by such consuls are declared to be on the same footing with those of the most favoured nations, respectively.

IV.—TRIPOLI.

Treaty of June 4, 1805.

ART. XVIII. If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other, the consul shall decide between the parties; and whenever the consul shall require any aid or assistance from the Government of Tripoli, to enforce his decisions, it shall immediately be granted to him. And if any dispute shall arise between any citizen of the United States and the citizens or subjects of any other nation, having a consul or agent in Tripoli, such dispute shall be settled by the consuls or agents of the respective nations.

ART. XIX. If a citizen of the United States should kill or wound a Tripoline, or, on the contrary, if a Tripoline shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial; and if any delinquent shall make his escape, the consul shall not be answerable for him in any manner whatever.

V.—TURKEY.

Treaty of May 7, 1830.

ART. IV. If litigations and disputes should arise between subjects of the Sublime Porte and citizens of the United States, the parties shall not be heard, nor shall judgment be pronounced unless the American dragoman be present. Causes in which the sum may exceed five hundred piastres, shall be submitted to the Sublime Porte,

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to be decided according to the laws of equity and justice. Citizens of the United States of America, quietly pursuing their commerce, and not being charged or convicted of any crime or offense, shall not be molested; and even when they may have committed some offence they shall not be arrested and put in prison, by the local authorities, but they shall be tried by their minister or consul, and punished according to their offence, following, in this respect, the usage observed towards other Franks.

VI.—SIAM.

Treaty of March 20, 1833.

ART. IX. Merchants of the United States trading in the Kingdom of Siam shall respect and follow the laws and customs of the country in all points.

VII.—SIAM.

Treaty of May 29, 1856.

ART. II. The interests of all American citizens coming to Siam shall be placed under the regulations and control of a consul, who will be appointed to reside at Bangkok. He will himself conform to and will enforce the observance by American citizens of all the provisions of this treaty, and such of the former treaty, negotiated by Mr. Edmund Roberts in 1833, as shall still remain in operation. He shall also give effect to all rules and regulations as are now or may hereafter be enacted for the government of American citizens in Siam, the conduct of their trade, and for the prevention of violations of the laws of Siam. Any disputes arising between American citizens and Siamese subjects shall be heard and determined by the consul, in conjunction with the proper Siamese officers; and criminal offences will be punished, in the case of American offenders, by the consul, according to American laws, and in the case of Siamese offenders by their own laws, through the Siamese authorities. But the consul shall not interfere in any matters referring solely to Siamese; neither will the Siamese authorities interfere in questions which only concern the citizens of the United States.

VIII.—MASCAT.

Treaty of September 21, 1833.

ART. IX. The President of the United States may appoint consuls to reside in the ports of the Sultan where the principal commerce shall be carried on, which consuls shall be the exclusive judges of all disputes or suits wherein American citizens shall be engaged with each other. They shall have power to receive the property of any American citizen dying within the Kingdom, and to send the same to his heirs, first paying all his debts due to the subjects of the Sultan. The said consuls shall not be arrested, nor shall their property be seized, nor shall any of their household be arrested, but their persons and property and their houses shall be inviolate. Should any consul, however, commit any offence against the laws of the Kingdom, complaint shall be made to the President, who will immediately displace him.

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IX.—China.

Treaty of July 3, 1844.

ART. XXI. Subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China; and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the consul, or other public functionary of the United States thereto authorized, according to the laws of the United States. And in order to the prevention of all controversy and disaffection justice shall be equitably and impartially administered on both sides.

ART. XXIV. * * * And if controversies arise between citizens of the United States and subjects of China, which can not be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction.

ART. XXV. All questions in regard to rights, whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction of and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing between the United States and such governments, respectively, without interference on the part of China.

ART. XXIX. * * * The merchants, seamen, and other citizens of the United States shall be under the superintendence of the appropriate officers of their Government. If individuals of either nation commit acts of violence or disorder, use arms to the injury of others, or create disturbances endangering life the officers of the two Governments will exert themselves to enforce order and to maintain the public peace by doing impartial justice in the premises.

X.—China.

Treaty of June 18, 1858.

ART. XI. All citizens of the United States of America in China, peaceably attending to their affairs, being placed on a common footing of amity and good will with the subjects of China, shall receive and enjoy for themselves and everything appertaining to them the protection of the local authorities of government, who shall defend them from all insult or injury of any sort. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the consul, shall immediately despatch a military force to disperse the rioters, apprehend the guilty individuals, and punish them with the utmost rigor of the law. Subjects of China guilty of any criminal act towards citizens of the United shall be punished by the Chinese authorities according to the laws of China. And citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble, or wound the persons or injure the property of Chinese or commit any other improper act in China, shall be pun-

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ished only by the consul or other public functionary thereto authorized according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities.

ART. XXVII. All questions in regards to rights whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other Government, shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China.

XI.—CHINA.

Treaty of November 17, 1880.

ART. IV. When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty, which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly autorized official of the plaintiff's nationality shall be freely permitted to attend the trial and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine, and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.

XII.—BORNEO.

Treaty of June 23, 1850.

ART. IX. His Highness the Sultan of Borneo agrees that in all cases where a citizen of the United States shall be accused of any crime committed in any part of His Highness's dominions, the person so accused shall be exclusively tried and adjudged by the American consul, or other officer duly appointed for that purpose; and in all cases where disputes or differences may arise between American citizens, or between American citizens and the subjects of His Highness, or between American citizens and the citizens or subjects of any other foreign power in the dominions of the Sultan of Borneo, the American consul, or other duly appointed officer, shall have power to hear and decide the same without any interference, molestation, or hinderance on the part of any authority of Borneo, either before, during, or after the litigation.

XIII.—PERSIA.

Treaty of December 13, 1856.

ART. V. All suits and disputes arising in Persia between Persian subjects and citizens of the United States shall be carried before the Persian tribunal to which such matters are usually referred at the place where a consul or agent of the United States may reside, and

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shall be discussed and decided according to equity, in the presence of an employé of the consul or agent of the United States.

All suits and disputes which may arise in the Empire of Persia between citizens of the United States shall be referred entirely for trial and for adjudication to the consul or agent of the United States residing in the province wherein such suits and disputes may have arisen, or in the province nearest to it, who shall decide them according to the laws of the United States.

All suits and disputes occurring in Persia between the citizens of the United States and the subjects of other foreign powers shall be tried and adjudicated by the intermediation of their respective consuls or agents.

In the United States Persian subjects in all disputes arising between themselves, or between them and citizens of the United States or foreigners shall be judged according to the rules adopted in the United States respecting the subjects of the most favored nation.

Persian subjects residing in the United States, and citizens of the United States residing in Persia shall when charged with criminal offences be tried and judged in Persia and the United States in the same manner as are the subjects and citizens of the most favored nation residing in either of the above-mentioned countries.

ART. VI. In case of a citizen or subject of either of the contracting parties dying within the territories of the other, his effects shall be delivered up integrally to the family or partners in business of the

XIV.—KOREA.

Treaty of May 22, 1882.

ART. IV. Subjects of Chosen, guilty of any criminal act towards citizens of the United States, shall be punished by the authorities of Chosen, according to the laws of Chosen; and citizens of the United States, either on shore or in any merchant-vessel, who may insult, trouble or wound the persons, or injure the property of the people of Chosen, shall be arrested and punished only by the consul or other public functionary of the United States, thereto authorized, according to the laws of the United States.

When controversies arise in the Kingdom of Chosen between citizens of the United States and subjects of His Majesty, which need to be examined and decided by the public officers of the two nations, it is agreed between the two governments of the United States and Chosen, that such cases shall be tried by the proper official of the nationality of the defendant, according to the laws of that nation. The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial, and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail.

It is however mutually agreed and understood between the high contracting powers, that whenever the King of Chosen shall have so far modified and reformed the statutes and judicial procedure of his kingdom that, in the judgment of the United States, they conform to the laws and course of justice in the United States, the right of ex-

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territorial jurisdiction over United States citizens in Chosen shall be abandoned, and thereafter United States citizens, when within the limits of the Kingdom of Chosen, shall be subject to the jurisdiction of the native authorities.

XV.—ZANZIBAR.

Treaty of July 3, 1886.

ART. II. The consuls of the United States appointed under the stipulations of the IX^th^ article of the treaty above mentioned, shall in addition to the rights, powers and immunities secured by said article, enjoy all the rights, privileges, immunities and jurisdictional powers which are now or may hereafter be enjoyed by the consuls and consular agents of the most favored nations and conversely, the consuls and consular agents which His Highness the Sultan may appoint to reside in the United States shall have the treatment of agents of like grade of the most favored nation.

EXHIBIT D.

THE AMERICAN SYSTEM.

[Extract from a letter of Secretary of State Frelinghuysen to Hon. William Windom, chairman Committee on Foreign Relations, dated April 29, 1882. (47th Cong., 1st sess. Senate Mis. Doc. No. 89.)]

The first act conferring such judicial powers upon the consuls of the United States was enacted August 11, 1848, and was entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." (9 Stat. L., 276.)

The jurisdiction in regard to civil matters conferred by this act included authority to execute the provisions of the treaty, whether in regard to persons or property, and jurisdiction over matters of contract, and over all controversies between citizens of the United States and others provided for by the treaty.

The jurisdiction over criminal offenses included the power to arraign and try in the manner provided in the law all citizens of the United States charged with offenses against law committed in the dominions of China (including Macao) and the Ottoman dominions.

As to both classes, the jurisdiction was to be exercised in conformity with the laws of the United States, so far applicable; and the common law, so far as necessary to supply defects, was extended over all citizens of the United States in those countries; and the diplomatic representatives of the United States were further authorized to supply by degrees and regulations any further defects.

The Department of State, unwilling to assume an arbitrary and almost unlimited power of legislation, has construed the power thus conferred upon the diplomatic representatives as remedial; as it is said in the consular regulations (edition of 1881, paragraph 612):

The authority conferred by the statute is defined to be a judicial authority. The minister is required to execute the power *in conformity with the laws of the United States*, with authority to supply defects and deficiencies in two cases

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only: (1) Where those laws are not adapted to the exercise of the judicial authority conferred by the statute; (2) where they are deficient in the provisions to furnish suitable remedies. In each of these contingencies the minister has authority to make regulations in order "*to furnish suitable and appropriate remedies*," and for no other purpose whatever.

It is manifest that the act of 1848 was far below the necessities of an American community in a country like China. The act of June 22, 1860 (see 12 Stat. L., p. 72), undertook to remedy the defects. It extended not only the common law, but equity and admiralty, over American citizens in those countries. In other respects it improved the working of the law of 1848, as, for example, in section 8, by limiting the amount of a fine for contempt; in section 9, by making a provision for rules to regulate appeals; in section 10, by providing for a permanent list of assessors, or assistants; by inserting section 18, conferring authority to settle criminal cases not of an aggravated character; in section 21, providing for the exercise in Turkey of civil jurisdiction when warranted by usages in its intercourse with other powers, and in section 22, by providing for the performance of a minister's duties in his absence by a consul-general or consul. It also extended the provisions of the act to Persia, Japan, the Barbary States, and Siam, and generally to all uncivilized countries in which we may obtain extraterritorial rights; made provisions for officers for the court and prisoners, and, finally, provided a mode by which marriages of Americans in those countries might be solemnized in the presence of our consular officers and attested by them.

By the act of July 1, 1870 (see 16 Stat. L., p. 183), appeals from final judgments of ministers in Japan or China were given in criminal cases, and in civil cases where the matter in dispute exceeded $2,500 exclusive of costs to the district court in California, and some further provisions were made as to officers of courts and as to prisoners.

Amendments were also introduced by the act of March 3, 1873, chap. 249, 17 Stat. L., 582, and the act of June 14, 1878, chap. 193, 20 Stat. L., 131. All these provisions are contained in the sections of the Revised Statutes quoted, infra, Exhibit E.

[Extract from opinion of Attorney-General Cushing, September 19, 1855, Opinions of the Attorneys-General, Vol. VII, p. 502, 503.]

"In order to execute these treaties—to carry the laws of the United States into Turkey and China—to have our territorial jurisdiction follow our people and our flag into those empires—persons clothed with lawful authority are the necessary instruments. * * *

"Accordingly, the statute contains the following important provision:

"'That such jurisdiction in criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute said treaty, extended over all citizens of the United States in China (and over all others to the extent that the terms of the treaty justify or require), so far as such laws are suitable to carry said treaty into effect; but in all cases where such laws are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies, the common law shall be extended in like manner over such

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citizens and others in China; and if defects still remain to be supplied, and neither the common law nor the statutes of the United States furnish appropriate and suitable remedies, the commissioner shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.'

"The system of law is composed, therefore, of—

"1. The laws of the United States, comprehending the Constitution, treaties, acts of Congress, equity and admiralty law, and the law of nations, public and private, as administered by the Supreme Court, the circuit and district courts of the United States, and, in certain cases, regulations of the Executive Departments.

"2. 'The common law.' In this respect, the statute furnishes a code of laws for the great mass of civil or municipal duties, rights, and relations of men, such as, within the United States, are of the resort of the courts of the several States.

"Some general code in these respects became necessary, because the law of the United States—that is, the Federal legislation—does not include these matters, and, of itself, would be of no avail toward determining any of the questions of property, succession, the contract, which constitute the staple matter of ordinary life.

"For such of the States as were founded in whole or chief part by colonists from Great Britain and Ireland, or their descendants, the law of England, as it existed in each of those States at the time of their separation from Great Britain, with such modifications as that law had undergone by the operation of colonial adjudication, legislation, or usage, became the common law of such independent State.

"Meantime, in addition to many changes, differing among themselves, which the common law underwent in each of the colonies before it became a State, that common law has been yet more largely changed by the legislation and judicial construction of each of the States.

"Hence, it was not enough to enact that the common law should intervene to supply, in China, deficiencies in the law of the United States. For the question would be sure to arise: What common law? The common law of England at the time when the British colonies were transmuted into independent republican States? Or the common law of Massachusetts? Or that of New York, or Pennsylvania, or Virginia? For all these are distinct, and in many important respects diverse, 'common law.'

"To dispose of this difficulty, the statute went one step further, and enacted, that—

"3. 'Decrees and regulations' may be made from time to time by the commissioner, which shall have the force of law, and supply any defects or deficiencies in the common law and the laws of the United States.

"This power of supplementary decree or regulation serves to provide for many cases of criminality, which neither Federal statutes nor the common law would cover.

"In addition to which, it is enacted that the commissioner, with advice of the several consuls, shall prescribe the forms of processes to be issued, the mode of executing the same, the form of oaths, the costs and fees to be allowed and paid; and generally to make all such decrees, regulations, and orders, under the act, as the exigency may

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demand, which shall be 'binding and obligatory until annulled or modified by Congress.' (Sec. 5.)

"In certain respects, therefore, the commissioner *legislates* for citizens of the United States in China, it being required meanwhile, that such 'regulations, orders, and decrees,' as he may make in the premises shall be transmitted 'to the President, to be laid before Congress for its revision.' (Sec. 6.)"

[Extract from instructions from Secretary Fish to Mr. Bingham, January 20, 1876.]

"These provisions of the statute of the United States are not understood to confer upon the minister any power of general legislation (as commonly understood), but simply the power of supplying decrees and regulations to supply any defects in the mode of exercising the jurisdiction which the statutes and treaties gave to the consular courts. With us at home our courts cannot legislate, cannot make laws, but may make regulations controlling the practice and the mode of their administering and enforcing the laws. When the statutes of the United States, the common law, and the law of equity and admiralty fail to furnish sufficient remedies for the exercise of the jurisdiction which the statute confers on the consular courts in Japan, China, &c., the minister may supply this deficiency. Such is understood to be the extent of legislative power, if even this can properly be called 'legislative power,' which is given to either minister or consul by the statute. No power is given to the minister to make a regulation which will establish or impair the rights existing between parties to create or impose new obligations on citizens. He is confined to making regulations which will enable the established courts to ad*minister* justice between parties acording to existing laws, and to punish those who offend against the laws."

CONSULAR REGULATIONS.

627. *Power of ministers to make regulations.*—The authority of a minister to make regulations having the force of law within the country to which he is accredited is a judicial authority. The minister is required to execute the power in conformity with the laws of the United States, with authority to supply defects and deficiencies in two cases only: (1) Where those laws are not adapted to the exercise of the judicial authority conferred by the statute; (2) where they are deficient in the provisions to furnish suitable remedies. (R. S., sec. 4086.) In each of these contingencies the minister has authority to make regulations in order "to furnish suitable and appropriate remedies," and for no other purpose whatever. Every power named in the statute in this respect is conferred upon the minister "in order to organize and carry into effect a system of jurisprudence." The statute confers upon him no authority to make a regulation requiring citizens of the United States to register their names and no power to enforce such a regulation judicially.

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EXHIBIT E.

(1) UNITED STATES STATUTES REGULATING THE EXERCISE OF EXTRA-TERRITORIAL JURISDICTION BY THE UNITED STATES.

SEC. 4083. To carry into full effect the provisions of the treaties of the United States with China, Japan, Siam, Egypt, and Madagascar, respectively, the minister and the consuls of the United States, duly appointed to reside in each of those countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with the judicial authority herein described, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty.

SEC. 4084. The officers mentioned in the preceding section are fully empowered to arraign and try, in the manner herein provided, all citizens of the United States charged with offenses against law, committed in such countries, respectively, and to sentence such offenders in the manner herein authorized; and each of them is authorized to issue all such processes as are suitable and necessary to carry this authority into execution.

SEC. 4085. Such officers are also invested with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights, whether of property or person; and they shall entertain jurisdiction in matters of contract, at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed, and in all other matters, at the port where, or nearest to which, the cause of controversy arose, or at the port where, or nearest to which, the damage complained of was sustained, provided such port be one of the ports at which the United States are represented by consuls. Such jurisdiction shall embrace all controversies between citizens of the United States, or others, provided for by such treaties, respectively.

SEC. 4086. Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

SEC. 4087. Each of the consuls mentioned in section forty hundred and eighty-three, at the port for which he is appointed, is authorized upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister, to issue his warrant for the arrest of any citizen of the United States

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charged with committing in the country an offense against law; and to arraign and try any such offender; and to sentence him to punishment in the manner herein prescribed.

SEC. 4088. The consuls and commercial agents of the United States at islands or in countries not inhabited by any civilized people, or recognized by any treaty with the United States, are authorized to try, hear, and determine all cases in regard to civil rights, whether of person or property, where the real debt or damages do not exceed the sum of one thousand dollars, exclusive of costs, and upon full hearing of the allegations and evidence of both parties, to give judgment according to the laws of the United States, and according to the equity and right of the matter, in the same manner as justices of the peace are now authorized and empowered where the United States have exclusive jurisdiction. They are also invested with the powers conferred by the provisions of sections forty hundred and eighty-six and forty hundred and eighty-seven for trial of offenses or misdemeanors.

SEC. 4089. Any consul when sitting alone may also decide all cases in which the fine imposed does not exceed five hundred dollars, or the term of imprisonment does not exceed ninety days; but in all such cases, if the fine exceeds one hundred dollars, or the term of imprisonment for misdemeanor exceeds sixty days, the defendants or any of them, if there be more than one, may take the case, by appeal, before the minister, if allowed jurisdiction, either upon errors of law or matters of fact, under such rules as may be prescribed by the minister for the prosecution of appeals in such cases.

SEC. 4090. Capital cases for murder or insurrection against the government of either of the countries hereinbefore mentioned, by citizens of the United States, or for offenses against the public peace amounting to felony under the laws of the United States, may be tried before the minister of the United States in the country where the offense is committed if allowed jurisdiction; and every such minister may issue all manner of writs, to prevent the citizens of the United States from enlisting in the military or naval service of either of the said countries, to make war upon any foreign power with whom the United States are at peace, or in the service of one portion of the people against any other portion of the same people; and he may carry out this power by a resort to such force belonging to the United States, as may at the time be within his reach.

SEC. 4091. Each of the ministers mentioned in section forty hundred and eighty-three shall, in the country to which he is appointed, be fully authorized to hear and decide all cases, criminal and civil, which may come before him, by appeal, under the provisions of this Title, and to issue all processes necessary to execute the power conferred upon him; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon sufficient grounds.

SEC. 4092. On any final judgment in a consular court of China or Japan, where the matter in dispute exceeds five hundred dollars and does not exceed two thousand five hundred dollars, exclusive of costs, an appeal shall be allowed to the minister in such country, as the case

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may be. But the appellant shall comply with the conditions established by general regulations. And the ministers are hereby authorized and required to receive, hear, and determine such appeals.

SEC. 4093. On any final judgment in any consular court of China or Japan, where the matter in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars, an appeal shall be allowed to the circuit court for the district of California, and upon such appeal a transcript of the libel, bill, answer, depositions, and all other proceedings in the cause shall be transmitted to the circuit court, and no new evidence shall be received on the hearing of the appeal; and the appeal shall be subject to the rules, regulations, and restrictions prescribed in law for writs of error from district courts to circuit courts.

SEC. 4094. On any final judgment of the minister to China, or to Japan, given in the exercise of original jurisdiction, where the matter in dispute, exclusive of costs, exceeds two thousand five hundred dollars, an appeal shall be allowed to the circuit court, as provided in the preceding section.

SEC. 4095. When any final judgment of the minister to China, or to Japan, is given in the exercise of original or of appellate criminal jurisdiction, the person charged with the crime or offense, if he considers the judgment erroneous in point of law, may appeal therefrom to the circuit court for the district of California; but such appeal shall not operate as a stay of proceedings, unless the minister certifies that there is probable cause to grant the same, when the stay shall be such as the interests of justice may require.

SEC. 4096. The circuit court for the district of California is authorized and required to receive, hear, and determine the appeals provided for in this title, and its decisions shall be final.

SEC. 4097. In all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose; and all objections to the competency or character of testimony shall be noted, with the ruling in all such cases, and the evidence shall be part of the case.

SEC. 4098. It shall be the duty of the ministers and the consuls in the countries mentioned in section forty hundred and eighty-three to encourage the settlement of controversies of a civil character, by mutual agreement, or to submit them to the decision of referees agreed upon by the parties; and the minister in each country shall prepare a form of submission for such cases, to be signed by the parties and acknowledged before the consul. When parties have so agreed to refer, the referees may, after suitable notice of the time and place of meeting for the trial, proceed to hear the case, and a majority of them shall have power to decide the matter. If either party refuses or neglects to appear, the referees may proceed ex parte. After hearing any case such referees may deliver their award, sealed, to the consul, who, in court, shall open the same; and if he accepts it, he shall indorse the fact, and judgment shall be rendered thereon, and execution issue in compliance with the terms thereof. The parties, however, may always settle the same before return thereof is made to the consul.

SEC. 4099. In all criminal cases which are not of a heinous character, it shall be lawful for the parties aggrieved or concerned therein, with the assent of the minister in the country, or consul, to adjust and

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settle the same among themselves, upon pecuniary or other considerations.

SEC. 4100. The ministers and consuls shall be fully authorized to call upon the local authorities to sustain and support them in the execution of the powers confided to them by treaty, and on their part to do and perform whatever is necessary to carry the provisions of the treaties into full effect, so far as they are to be executed in the countries, respectively.

SEC. 4101. In all cases, except as herein otherwise provided, the punishment of crime provided for by this Title shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations herein contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offense. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the minister in the country.

SEC. 4102. Insurrection or rebellion against the government of either of those countries, with intent to subvert the same, and murder, shall be capital offenses, punishable with death; but no person shall be convicted of either of those crimes unless the consul and his associates in the trial all concur in opinion and the minister also approves of the conviction. But it shall be lawful to convict one put upon trial for either of these crimes of a less offense of a similar character, if the evidence justifies it, and to punish, as for other offenses, by fine or imprisonment, or both.

SEC. 4103. Whenever any person is convicted of either of the crimes punishable with death, in either of those countries, it shall be the duty of the minister to issue his warrant for the execution of the convict, appointing the time, place, and manner; but if the minister is satisfied that the ends of public justice demand it he may from time to time postpone such execution; and if he finds mitigating circumstances which authorize it, he may submit the case to the President for pardon.

SEC. 4104. No fine imposed by a consul for a contempt committed in presence of the court, or for failing to obey a summons from the same, shall exceed fifty dollars; nor shall the imprisonment exceed twenty-four hours for the same contempt.

SEC. 4105. Any consul, when sitting alone for the trial of offenses or misdemeanors, shall decide finally all cases where the fine imposed does not exceed one hundred dollars, or the term of imprisonment does not exceed sixty days.

SEC. 4106. Whenever, in any case, the consul is of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he is of opinion that severer punishments than those specified in the preceding sections will be required, he shall summon, to sit with him on the trial, one or more citizens of the United States, not exceeding four, and in capital cases not less than four, who shall be taken by lot from a list which had previously been submitted to and approved by the minister, and shall be persons of good repute and competent for the duty. Every such associate shall enter upon the record his judgment and opinion, and shall sign the same; but the consul shall give judgment in the case. If the

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consul and his associates concur in opinion, the decision shall, in all cases, except of capital offenses and except as provided in the preceding section, be final. If any of the associates differ in opinion from the consul, the case, without further proceedings, together with the evidence and opinions, shall be referred to the minister for his adjudication, either by entering up judgment therein, or by remitting the same to the consul with instructions how to proceed therewith.

SEC. 4107. Each of the consuls mentioned in section four thousand and eighty-three shall have, at the port for which he is appointed, jurisdiction as herein provided, in all civil cases arising under such treaties, respectively, wherein the damages demanded do not exceed the sum of five hundred dollars; and, if he sees fit to decide the same without aid, his decision thereon shall be final. But whenever he is of opinion that any such case involves legal perplexities, and that assistance will be useful to him, or whenever the damages demanded exceed five hundred dollars, he shall summon, to sit with him on the hearing of the case, not less than two nor more than three citizens of the United States, if such are residing at the port, who shall be taken from a list which had previously been submitted to and approved by the minister, and shall be of good repute and competent for the duty. Every such associate shall note upon the record his opinion, and also, in case he dissents from the consul, such reasons therefor as he thinks proper to assign; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the judgment shall be final. If any of the associates differ in opinion from the consul, either party may appeal to the minister, under such regulations as may exist; but if no appeal is lawfully claimed, the decision of the consul shall be final.

SEC. 4108. The jurisdiction allowed by treaty to the ministers, respectively, in the countries named in section four thousand and eighty-three shall be exercised by them in those countries, respectively, wherever they may be.

SEC. 4109. The jurisdiction of such ministers in all matters of civil redress, or of crimes, except in capital cases for murder or insurrection against the governments of such countries, respectively, or for offenses against the public peace amounting to felony under the laws of the United States, shall be appellate only: *Provided*, That in cases where a consular officer is interested, either as party or witness, such minister shall have original jurisdiction.

SEC. 4110. All such officers shall be responsible for their conduct to the United States, and to the laws thereof, not only as diplomatic or consular officers, but as judicial officers, when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers.

SEC. 4111. The President is authorized to appoint marshals for such of the consular courts in those countries as he may think proper, not to exceed seven in number, namely: One in Japan, four in China, one in Siam, and one in Turkey, each of whom shall receive a salary of one thousand dollars a year, in addition to the fees allowed by the regulations of the ministers, respectively, in those countries.

SEC. 4112. It shall be the duty of the marshals, respectively, to execute all process issued by the minister of the United States in those countries, respectively, or by the consul at the port at which they reside, and to make due return thereof to the officer by whom it was

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isued, and to conform in all respects to the regulations prescribed by the ministers, respectively, in regard to their duties.

SEC. 4113. Each marshal, before entering unpon the duties of his office, shall give bond for the faithful performance thereof in a penal sum not to exceed ten thousand dollars, with two sureties to be approved by the Secretary of State. Such bond shall be transmitted to the Secretary of the Treasury, and a certified copy thereof be lodged in the office of the minister.

SEC. 4114. Whenever any person desires to bring suit upon the bond of any such marshal, it shall be the duty of the Secretary of the Treasury, or of the minister having custody of a copy of the same, to give to the person so applying a certified copy thereof, upon which suit may be brought and prosecuted with the same effect as could be done upon the original: *Provided*, The Secretary of the Treasury, or the minister to whom the application is made, is satisfied that there is probable cause of action against the marshal.

SEC. 4115. Upon a plea of non est factum, verified upon oath, or any other good cause shown, the court or the consul or minister trying the cause may require the original bond of the marshal in those countries to be produced; and it shall be the duty of the Secretary of the Treasury to forward the original bond to the court, or consul, or minister requiring the same.

SEC. 4116. All rules, orders, writs, and processes of every kind which are intended to operate or be enforced against any of the marshals, in any of the countries named in this Title, shall be directed to and executed by such persons as may be appointed for that purpose by the minister or consul issuing the same.

SEC. 4117. In order to organize and carry into effect the system of jurisprudence demanded by such treaties, respectively, the ministers, with the advice of the several consuls in each of the countries, respectively, or of so many of them as can be conveniently assembled, shall prescribe the forms of all processes to be issued by any of the consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted, and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services; the manner in which all officers and agents to execute process, and to carry this Title into effect, shall be appointed and compensated; the form of bail bonds, and the security which shall be required of the party who appeals from the decision of a consul; and shall make all such further decrees and regulations from time to time, under the provisions of this Title, as the exigency may demand.

SEC. 4118. All such regulations, decrees, and orders, shall be plainly drawn up in writing, and submitted, as hereinbefore provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, and such consul shall signify his assent or dissent in writing, with his name subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the act.

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SEC. 4119. All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision.

SEC. 4120. It shall be the duty of the minister in each of those countries to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as the minister shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of this Title; and regular accounts, both of receipts and expenditures, shall be kept by the minister and consuls and transmitted annually to the Secretary of State.

SEC. 4121. The President, when provision is not otherwise made, is authorized to allow, in the adjustment of the accounts of each of the ministers or consuls, the actual expenses of the rent of suitable buildings or parts of buildings to be used as prisons for American convicts in those countries, not to exceed in any case the rate of six hundred dollars a year; and also the wages of the keepers of the same, and for the care of offenders, not to exceed, in any case, the sum of eight hundred dollars per annum. But no more than one prison shall be hired in Japan, four in China, one in Turkey, and one in Siam, at such port or ports as the minister, with the sanction of the President, may designate, and the entire expense of prison and prison keepers at the consulate of Bangkok, in Siam, shall not exceed the sum of one thousand dollars a year.

SEC. 4122. The President is authorized to allow, in the adjustment of the accounts of the consul-general at Shanghai, the actual expense of the rent of a suitable building, to be used as a prison for American convicts in China, not to exceed one thousand five hundred dollars a year; and also the wages of the keepers of the same, and for the care of offenders, not to exceed five thousand dollars a year; and to allow, in the adjustment of the accounts of the consuls at other ports in China, the actual expense of the hire of constables and the care of offenders, not to exceed in all five thousand dollars a year.

SEC. 4123. The President is hereby authorized to allow, in the adjustment of the accounts of the consul at Kanagawa, the actual expense of the rent of a suitable building, to be used as a prison for American convicts in Japan, and not to exceed seven hundred and fifty dollars a year; and also the wages of the keepers of the same, and for the care of offenders, not to exceed two thousand five hundred dollars a year; and to allow in the adjustment of the accounts of the consuls at other ports in Japan the actual expense of the hire of constables and the care of offenders, not to exceed in all two thousand five hundred dollars a year.

SEC. 4124. The Secretary of State, through the minister resident at Japan, is authorized to rent, furnish, and keep suitable buildings, with grounds appurtenant, in Jeddo, or such other place as he may designate, for a court-house and jail, at an annual cost not exceeding five thousand dollars: *Provided*, That the period for which the buildings shall be rented shall be for two years, with renewals for two years, as the Secretary of State may determine.

SEC. 4125. The provisions of this Title, so far as the same relate to crimes and offenses committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May

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seventh, eighteen hundred and thirty, and shall be executed in the Ottoman dominions in conformity with the provisions of the treaty, and of this Title, by the minister and the consuls appointed to reside therein, who are hereby ex officio vested with the powers herein conferred upon the ministers and consuls in China, for the purposes above expressed, so far as regards the punishment of crime, and also for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey, or its usages in its intercourse with the Franks, or other foreign Christian nations.

SEC. 4126. The provisions of this Title shall extend to Persia, in respect to all suits and disputes which may arise between citizens of the United States therein; and the minister and consuls who may be appointed to reside in Persia are hereby invested, in relation to such suits and disputes, with such powers as are by this Title conferred upon the ministers and consuls in China. All suits and disputes arising in Persia between Persian subjects and citizens of the United States shall be carried before the Persian tribunal to which such matters are usually referred, at the place where a consul or agent of the United States may reside, and shall be discussed and decided according to equity, in the presence of an employé of the consul or agent of the United States; and it shall be the duty of the consular officer to attend the trial in person, and see that justice is administered. All suits and disputes occurring in Persia between the citizens of the United States and the subjects of other foreign powers, shall be tried and adjudicated by the intermediation of their respective ministers or consuls, in accordance with such regulations as shall be mutually agreed upon by the minister of the United States for the time being, and the ministers of such foreign powers, respectively, which regulations shall from time to time be submitted to the Secretary of State.

SEC. 4127. The provisions of this Title, so far as the same are in conformity with the stipulations in the existing treaties between the United States and Tripoli, Tunis, Morocco, and Muscat, respectively, shall extend to those countries, and shall be executed in conformity with the provisions of the treaties and of the provisions of this Title, by the consuls appointed by the United States to reside therein, who are hereby ex officio invested with the powers herein delegated to the ministers and consuls of the United States appointed to reside in the countries named in section forty hundred and eighty-three, so far as the same can be exercised under the provisions of treaties between the United States and the several countries mentioned in this section, and in accordance with the usages of the countries in their intercourse with the Franks or other foreign Christian nations.

SEC. 4128. If at any time there be no minister in either of the countries hereinbefore mentioned, the judicial duties which are imposed by this Title upon the minister shall devolve upon the Secretary of State, who is authorized and required to discharge the same.

SEC. 4129. The provisions of this Title relating to the jurisdiction of consular and diplomatic officers over civil and criminal cases in the countries therein named, shall extend to any country of like character with which the United States may hereafter enter into treaty relations.

SEC. 4130. The word "minister," when used in this Title shall be understood to mean the person invested with, and exercising, the

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principal diplomatic functions. The word "consul" shall be understood to mean any person invested by the United States with, and exercising, the functions of consul-general, vice-consul-general, consul or vice-consul.

(2) AN ACT CREATING A UNITED STATES COURT FOR CHINA AND PRESCRIBING THE JURISDICTION THEREOF.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court is hereby established, to be called the United States court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by section two of this Act. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively.

That the seal of the said United States court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin, "The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court, and all transcripts, records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal, may be authenticated by said seal, and shall be signed by the clerk of said court. All processes issued from the said court shall bear test from the day of such issue.

SEC. 2. The consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed five hundred dollars United States money, and in criminal cases where the punishment for the offense charged can not exceed by law one hundred dollars fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States court for China: *Provided, also*, That appeal may be taken to the United States court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favor of the United States. The said United States court for China shall have and exercise supervisory control over the

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discharge by consuls and vice-consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. Within sixty days after the death in China of any citizen of the United States, or any citizen of any territory belonging to the United States, the consul or vice-consul whose duty it becomes to take possession of the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall as additional effects come from time to time into his possession immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within said sixty days a schedule, under oath, of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice-consul shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within ten days after any such sale report the fact of such sale to said court, and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice-consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require, where it may be necessary, a special bond for the faithful performance of his duty to be given by any consul or vice-consul into whose possession the estate of any such deceased citizen shall have come, in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof.

SEC. 3. That appeals shall lie from all final judgments or decrees of said court to the United States circuit court of appeals of the ninth judicial circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district and circuit courts of the United States. Said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken.

SEC. 4. The jurisdiction of said United States court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts, and all decisions, judgments, and decrees of said United States court, shall be enforced in accordance with said treaties and laws. But in all such cases when

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such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same, subject to the terms of any treaties between the United States and China.

SEC. 5. That the procedure of the said court shall be in accordance, so far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States: *Provided, however*, That the judge of the said United States court for China shall have authority from time to time to modify and supplement said rules of procedure. The provisions of sections forty-one hundred and six and forty-one hundred and seven of the Revised Statutes of the United States allowing consuls in certain cases to summon associates shall have no application to said court.

SEC. 6. There shall be a district attorney, a marshal, and a clerk of said court, with authority possessed by the corresponding officers of the district courts in the United States as far as may be consistent with the conditions of the laws of the United States and said treaties. The judge of said court and the district attorney, who shall be lawyers of good standing and experience, marshal, and clerk shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive as salary, respectively, the sums of eight thousand dollars per annum for said judge, four thousand dollars per annum for said district attorney, three thousand dollars per annum for said marshal, and three thousand dollars per annum for said clerk. The judge of the said court and the district attorneys shall, when the sessions of the court are held at other cities than Shanghai, receive in addition to their salaries their necessary expenses during such sessions, not to exceed ten dollars per day for the judge and five dollars per day for the district attorney.

SEC. 7. The tenure of office of the judge of said court shall be ten years, unless sooner removed by the President for cause; the tenure of office of the other officials of the court shall be at the pleasure of the President.

SEC. 8. The marshal and the clerk of said court shall be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court. They shall each appoint, with the written approval of said judge, deputies at Canton and Tientsin, who shall also be required to furnish bonds for the faithful performance of their duties, which bonds shall be subject, both as to form and sufficiency of the sureties, to the approval of the said judge. Such deputies shall receive compensation at the rate of five dollars for each day the sessions of the court are held at their respective cities. The office of marshal in China now existing in pursuance of section forty-one hundred and eleven of the Revised Statutes is hereby abolished.

SEC. 9. The tariff of fees of said officers of the court shall be the same as the tariff already fixed for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States.

Approved, June 30, 1906.

[U. S. Stat. L., 1905–1906, p. 814.]

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EXHIBIT F.

CONSULAR COURT REGULATIONS.[a]

CHINA.

J. W. Davis. Jan. 2, 1849; Sept. 9, 1850. S. Ex. Doc. 72, 31st Cong., 1st sess., p. 8–19. Procedure and appointment of clerks and marshals of consular courts, fees and forms.

P. Parker. Mar. 10, 1851; Mar. 1, 1852. S. Ex. Doc. 43, 32d Cong., 1st sess., p. 2–3. Control of seamen on shore leave, employment of Chinese, and trading with Chinese.

R. M. McLane. Dec. 5, 1854; Feb. 25, 1856. H. Ex. Doc. 32, 34th Cong., 1st sess., p. 3–4. Neutral conduct of individiuals. (Published at the time of the Taiping rebellion.)

R. M. McLane. Aug. 25, 1854; July 15, 1856. H. Ex. Doc. 125, 34th Cong., 1st. sess., p. 5–11. Collection of debts and procedure.

R. M. McLane. Oct. 2, 1854; July 15 1856. H. Ex. Doc. 125, 34th Cong., 1st sess., p. 7–15. Collection of debts and procedure.

P. Parker. Mar. 8, 1856; Dec. 12, 1856. H. Ex. Doc. 11, 34th Cong., 3d sess., p. 7–8. Exercise of judicial functions by vice-consuls and acting consuls.

P. Parker. Mar. 4, 1857; Dec. 10, 1857. H. Ex. Doc. 9, 35th, Cong., 1st sess., p. 2–3. Authority to hold court on board ship in the five ports during the hostilities between England and France, and China.

W. B. Reed. Feb. 27, 1858; Dec. 27, 1858. S. Ex. Doc. 11, 35th Cong., 2d sess., p. 1–2. Assignments for the benefit of creditors.

S. W. Williams. June 12, 1858; Jan. 26, 1859. S. Ex. Doc. 34, 40th Cong., 3d sess., p. 1–10. Prohibition to navigate the Strawshoe channel of the Yangtse River.

W. B. Reed. Nov. 9, 1858; Feb. 6, 1860. S. Ex. Doc. 7, 36th Cong., 1st sess., p. 1–2. Court fees.

A. Burlingame. Apr. 22, 1864; Dec. 4, 1865. H. Ex. Doc. 1, 39th Cong., 1st sess., pt. 2, p. 414–5. Registration.

A. Burlingame. Apr. 23, 1864; Dec. 4, 1865. H. Ex. Doc. 1, 39th Cong., 1st sess., pt. 2, p. 415–21. Procedure and general, annulling earlier decrees inconsistent therewith.

J. B. Angell. May 26, 1881; Mar. 22, 1882. H. Ex. Doc. 213, 47th Cong., 1st sess., p. 1–3. Summons to absentee defendants in civil suits.

C. Denby. Date of promulgation not given; Jan. 14, 1889. S. Ex. Doc. 65, 50th Cong., 2d sess., p. 1–4. Court fees.

C. Denby. Aug. 1, 1888; Jan. 14, 1889. S. Ex. Doc. 65, 50th Cong., 2d sess., p. 4–6. Permitting judgments by confession and prescribing forms for the same.

C. Denby. Sept. 15, 1897; Dec. 15, 1897. S. Ex. Doc. 32, 55th Cong., 2d sess. Arrests and rendition of offenders.

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[a] The second column gives, first, the date of promulgation; second, the date of submitting the regulations to Congress. See supra, p. 43–5, 53–4.

There appear to have been no regulations for other countries excepting Japan, which were as follows:

C. E. De Long. Nov. 16, 1870; Jan. 27, 1871. S. Ex. Doc. 25, 41st Cong., 3d sess., p. 1–39. Procedure.

J. A. Bingham. Jan. 27, 1881; Dec. 6, 1881. H. Ex. Doc. 1, 47th Cong., 1st sess., p. 690–1. Criminal penalties.

The regulations for Japan ceased to be of force July 17, 1899. See supra, p. 183–8.

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KOREA.

A. Heard. Mar. 31, 1892; May 25, 1892. S. Ex. Doc. 104, 52d Cong., 1st sess., p. 2–31. Procedure and general.

TURKEY.

E. J. Morris. Dec. 18, 1862; Jan. 23, 1863. S. Ex. Doc. 25, 37th Cong., 3d sess., p. 3–17. Procedure and general.

EXHIBIT G.

1. CONSULAR COURT REGULATIONS FOR CHINA, GENERAL, 1864.

I. ORDINARY CIVIL PROCEEDINGS.

1. Civil proceedings between American citizens must commence by written petition verified by oath before the consul.

2. Ordinary personal civil actions are of three classes, viz: Contract, comprising all cases of contract or debt; wrong, when damages are claimed for a wrong; replevin, when possession of a specific article is claimed.

3. In contract, the petition must aver that payment, or a performance of the conditions of contract, has been demanded and withheld; and, in replevin, that the articles to be replevied have been demanded.

4. The petitioner shall be required to deposit a reasonable sum to defray the probable expenses of court and defendant's costs; subsequent deposits may be required if found necessary.

5. Upon deposit of the money, the consul shall order notice on the petition, in writing, directing defendant to appear before the court at a given day and hour, to file his written answer on oath.

6. Notice must be served on each defendant at least five days before return day, by delivery of an attested copy of the petition and order, and of any accompanying account or paper.

7. Personal service should always be required when practicable.

8. On proof of due notice, judgment by default shall be procured against any defendant failing to appear and file his answer as required; but the default may be taken off for good cause within one day after, exclusive of Sunday.

9. But in actions of wrong, and all others where the damages are in their nature unliquidated and indefinite, so that they cannot be calculated with precision from the statement of the petition, the amount of the judgment shall be ascertained by evidence, notwithstanding the default.

10. If defendant appears and answers, the consul, having both parties before him, shall, before proceeding further, encourage a settlement by mutual agreement, or by submission of the case to referees agreed on by the parties, a majority of whom shall decide it.

11. Parties should, at the trial, be confined as closely as may be to the averments and denials of the statement and answer, which shall not be altered after filing, except by leave granted in open court.

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12. On application of either party and advance of the fees, the consul shall compel the attendance of any witness within his jurisdiction before himself, referees, or commissioners.

13. Each party is entitled and may be required to testify.

14. Judgment may be given summarily against either party failing to obey any order or decree of the consul.

15. For sufficient cause and on sufficient security the consul, on filing a petition, may grant a process of attachment of any defendant's property to a sufficient amount, or of arrest of any defendant not a married woman, nor in the service of the United States under commission from the President.

16. Defendant may at any time have the attachment dissolved by depositing such sums, or given such security as the consul may require.

17. Perishable property, or such as is liable to serious depreciation under attachment, may, on petition of either party, be sold by the consul's order, and its proceeds deposited in the consulate.

18. Any defendant arrested or imprisoned on civil petition shall be released on tender of a sufficient bond, deposit of a sufficient sum, or assignment of sufficient property.

19. Any person under civil arrest or imprisonment may have his creditor cited before the consul to hear a disclosure of the prisoner's affairs under oath, and to question thereon; and if the consul shall be satisfied of its truth and thoroughness, and of the honesty of the debtor's conduct towards the creditor, he shall forever discharge him from arrest upon that debt; provided that the prisoner shall offer to transfer and secure to his creditor the property disclosed, or sufficient to pay the debt at the consul's valuation.

20. The creditor must advance to the jailer his fees and payment for his prisoner's board until the ensuing Monday, and afterwards weekly, or the debtor will be discharged from imprisonment and future arrest.

21. On the second day after judgment (exclusive of Sunday), execution may issue, enforcing the same, with interest at 12 per cent a year against the property and person of the debtor, returnable in thirty days, and renewable.

22. Sufficient property to satisfy the execution and all expenses may be seized and sold at public auction by the officer after due notice.

23. Property attached on petition, and not advertised for sale within ten days after final judgment, shall be returned to the defendant.

24. When final judgment is given in favor of defendant, his person and property are at once freed from imprisonment or attachment, and all security given by him discharged. And the consul may, at his discretion, award him compensation for any damage necessarily and directly sustained by reason of such attachment, arrest or imprisonment.

25. In actions of contract, defendant may offset petitioner's claim by a counter claim, filing his own claim, under oath, with his answer. Petitioner shall be notified to file his answer seasonably, on oath, and the two claims shall then be tried together, and but one judgment given for the difference, if any be proved in favor of either party, otherwise for defendant's costs.

26. Except as hereinafter provided, the party finally prevailing recovers costs, to be taxed by him and revised by the consul.

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27. In contract, the consul may order defendant's property or credits in a third party's hands, to be attached on the petition by serving him with due notice as trustee, provided petitioner secures trustee his costs by adequate special deposit.

28. If adjudged trustee, the third party may retain his costs from the amount for which he is adjudged trustee, if sufficient; otherwise the balance of trustee's costs must be paid out of petitioner's special deposit, as must the whole of his costs if not adjudged trustee.

29. The amount for which a trustee is charged must be inserted in the execution, and demanded of him by the officer within ten days after judgment, or all claim on him ceases. Process against property or person of the trustee may issue ten days after demand.

30. If petitioner recovers judgment for less than ten dollars, or if less than ten dollars of defendant's property or credits is proved in the third party's hands, in either case the third party must be discharged with costs against petitioner.

31. Before granting a writ of replevin, the consul shall require petitioner to file a sufficient bond, with two responsible sureties, for double the value of the property to be replevied, one an American citizen; or petitioner may deposit the required amount.

II. TENDER, ETC.

32. Before a creditor files his petition in contract, his debtor may make an absolute and unconditional offer of the amount he considers due by tendering the money in the sight of the creditor or his legal representative.

33. If not accepted, the debtor shall, at his own risk and paying the charges, deposit the money with the consul, who shall receipt to him and notify the creditor.

34. It shall be paid to the creditor at any time, if demanded, unless previously withdrawn by the depositor.

35. If the depositor does not withdraw his deposit, and, upon trial, is not adjudged to have owed the petitioner at the time of the tender more than its amount, he shall recover all his costs.

36. At any stage of a suit in contract or wrong, defendant may file an offer to be defaulted for a specific sum and the costs up to that time; and if petitioner chooses to proceed to trial, and does not recover more than the sum offered, and interest, he shall pay all defendant's costs arising after the offer, execution issuing for the balance only.

III. REFERENCE.

37. When parties agree to a reference they shall immediately file a rule, and the case be marked "Referred;" a commission shall then issue to the referees, with a copy of all papers filed in the case.

38. The referees shall report their award to the consul, who shall accept the same, and give judgment and issue execution thereon, unless satisfied of fraud, perjury, corruption, or gross error in the proceedings.

39. In cases involving more than five hundred dollars, if his acceptance is withheld, the consul shall at once transmit the whole case, with a brief statement of his reasons, and the evidence thereon, to the minister, who shall give judgment on the award, or grant a new trial before the consul.

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IV. APPEAL.

40. Appeals must be claimed before three o'clock in the afternoon of the day after judgment (excluding Sunday); but in civil cases, only upon sufficient security.

41. Within five days after judgment the appellant must set forth his reasons by petition filed with the consul, which shall be transmitted as soon as may be to the minister, with a copy of docket entries and of all papers in the case.

V. NEW TRIAL.

42. On proof of the perjury of any important witness of the prevailing party upon a material point, affecting the decision of a suit, the consul who tried it may, within a year after final judgment, grant a new trial on such terms as he may deem just.

43. Within one year after final judgment in any suit not involving more than five hundred dollars, the consul who tried it, or his successor, may, upon sufficient security, grant a new trial where justice manifestly requires it; if exceeding $500, with concurrence of the minister.

VI. HABEAS CORPUS.

44. No consul shall recognize the claim of any American citizen arising out of a violation of the provisions of the act of Congress approved February 19, 1862, relating to the "coolie trade" so-called, nor any claim which involves the holding any person in slavery.

45. Upon application of any person in writing and under oath, representing that he or any other person is enslaved, unlawfully imprisoned, or deprived of his liberty by any American citizen within the jurisdiction of a consul, such consul may issue his writ of *habeas corpus*, directing such citizen to bring the said person, if in his custody or under his control, before him, and the question shall be determined summarily, subject to appeal.

VII. DIVORCE.

46. Libels for divorce must be signed and sworn to before the consul, and on the trial each party may testify.

47. The consul, for good cause, may order the attachment of libeller's property to such an amount and on such terms as he may think proper.

48. He may also, at his discretion, order the husband to advance to his wife, or pay into court, a reasonable sum to enable her to prosecute or defend the libel, with a reasonable monthly allowance for her support, pending the proceedings.

49. Alimony may be awarded or denied the wife on her divorce at his discretion.

50. Custody of the minor children may be decreed to such party as justice and the children's good may require.

51. Divorce releases both parties, and they shall not be remarried to each other.

52. Costs are at the discretion of the consul.

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VIII. MARRIAGE.

53. Each consul shall record all marriages solemnized by him or in his official presence.

IX. BIRTHS AND DEATHS.

54. The birth and death of every American citizen within the limits of his jurisdiction shall likewise be recorded.

X. BANKRUPTCY, PARTNERSHIP, PROBATE, ETC.

55. Until promulgation of further regulations, consuls will continue to exercise their former lawful jurisdiction and authority in bankruptcy, partnerships, probate of wills, administration of estates, and other matters of equity, admiralty, ecclesiastical and common law, not specially provided for in previous decrees, according to such reasonable rules, not repugnant to the Constitution, treaties, and laws of the United States, as they may find necessary or convenient to adopt.

XI. SEAMEN.

56. In proceedings or prosecutions instituted by or against American seamen, the consul may, at his discretion, suspend any of these rules in favor of the seamen when, in his opinion, justice, humanity, and public policy require it.

XII. CRIMINAL PROCEEDINGS.

57. Complaints and informations against American citizens should always be signed and sworn to before the consul when the complainant or informant is at or near the consul's port.

58. All complaints and informations not so signed and sworn to by a citizen of the United States, and all complaints and informations in capital cases must be authenticated by the consul's certificate of his knowledge or belief of the substantial truth of enough of the complaint or information to justify the arrest of the party charged.

59. No citizen shall be arraigned for trial until the offense charged is distinctly made known to him by the consul in respondent's own language. In cases of magnitude, and in all cases when demanded, an attested copy (or translation) of the complaint, information, or statement, authenticated by the consul, shall be furnished him in his own language, as soon as may be, after his arest.

60. The personal presence of the acused is indispensible throughout the trial.

61. He shall be informed of his right to testify, and cautioned that if he chooses to offer himself as a witness he must answer all questions that may be propounded by the consul or his order, like any other witness.

62. The Government and the accused are equally entitled to compulsory process for witnesses within their jurisdiction, and if the consul believes the accused to be unable to advance the fees his necessary witnesses shall be summoned at the expense of the United States.

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63. When punishment is by fine, costs may be included or remitted at the consul's discretion. An alternative sentence of thirty days' imprisonment shall take effect on nonpayment of any part of the fine or costs adjudged in any criminal proceedings.

64. Any prisoner, before conviction, may be admitted to bail by the consul who tries him, except in capital cases.

65. No prisoner charged with capital offense shall be admitted to bail where the proof is evident or the presumption of his guilt great.

66. After conviction and appeal the prisoner may be admitted to bail only by the minister.

67. Any citizen of the United States offering himself as bail shall sign and swear, before the consul, to a schedule of unencumbered personal property of a value of at least double the amount of the required bail.

68. Any other proposed bail or security shall sign and swear before the consul to a similar schedule of unencumbered personal property within the local jurisdiction of the consulate, or he may be required to deposit the amount in money or valuables with the consul.

69. Unless such sufficient citizen becomes bail, or such deposit is made, at least two sureties shall be required.

70. Any American bail may have leave of the consul to surrender his principal on payment of all costs and expenses.

71. Any complainant, informant, or prosecutor may be required to give security for all costs of the prosecution, including those of the accused; and every complainant, &c., not a citizen of the United States, shall be so required, unless in the consul's opinion justice will be better promoted otherwise; and when such security is refused the prosecution shall abate.

72. When the innocence of the accused, both in law and in intention, is manifest, the consul shall add to the usual judgment of acquittal the word "honorably."

73. In such case judgment may be given and execution issued summarily against any informer, complainant, or prosecutor for the whole costs of the trial, including those of the accused, or for any part of either or both, if the proceeding appears to have been groundless and vexatious, originating in corrupt, malicious, or vindictive motives.

74. Consuls will ordinarily encourage the settlement of all prosecutions, not of a heinous character, by the parties aggrieved or concerned.

XIII. OATHS.

75. Oaths shall be administered in some language that the witness understands.

76. A witness not a Christian shall be sworn according to his religious belief.

77. An avowed atheist shall not be sworn, but may affirm, under the pains and penalties of perjury, the credibility of his evidence being for the consideration of the consul.

78. A Christian, conscientiously scrupulous of an oath, may affirm under the pains and penalties of perjury.

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XIV. DOCKETS, RECORDS, ETC.

79. Each consul shall keep a regular docket or calendar of all civil actions and proceedings, entering each case separately, numbering consecutively to the end of his term of office, with the date of filing, the names of the parties in full, their nationality, the nature of the proceeding, the sum or thing claimed, with minutes and dates of all orders, decrees, continuances, appeals, and proceedings, until final judgment.

80. He shall keep another regular docket for all criminal cases, with sufficient similar memoranda.

81. All original papers shall be filed at once and never removed; no person but an officer of the consulate or the minister should be allowed access to them. All papers in a case must be kept together in one inclosure and numbered as in the docket, with the parties' names, the nature of the proceedings, the year of filing the petition and of final judgment conspicuously marked on the inclosure, and each year's cases kept by themselves in their order.

XV. LIMITATION OF ACTIONS AND PROSECUTIONS.

82. Heinous offenses, not capital, must be prosecuted within six years; minor offenses within one.

83. Civil actions based on written promise, contract, or instrument must be commenced within six years after the cause of action accrues; others within two.

84. In prosecutions for heinous offenses, not capital, and in civil cases involving more than $500, any absence of respondent or defendant for more than three months at a time from China shall be added to the limitation; and in civil cases involving more than $100, the period during which the cause of action may be fraudulently concealed by defendant shall likewise be added.

XVI. GENERAL PROVISIONS.

85. All trials and proceedings in the United States consular courts in China shall be open and public.

86. Papers and testimony in a foreign language shall be translated into English by a sworn interpreter appointed by the consul; in civil cases to be paid by petitioner. Oaths and questions shall be translated by the interpreter from the English for any witness who does not understand English.

87. Parties may be required to file their petitions, answers, complaints, informations, and all other papers addressed to the court, in English; or they may be translated by the interpreter at the consul's discretion. All testimony must be taken in writing in open court, by the consul or his order, and signed by the witness, after being read over to him for his approval and correction, and it shall form part of the papers in the case.

88. The consul may adjourn his court from time to time and place to place within his jurisdiction, always commencing proceedings and giving judgment at the consulate.

89. All processes not served by the consul personally must be executed by an officer of the consulate, who shall sign his return, speci-

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fying the time and mode of service, and annexing an account of his fees.

90. On appeal, copies of all the papers must be paid for in advance by the appellant, except in criminal cases where respondent is unable to pay.

91. Any person interested is entitled to a copy of any paper on file, on prepayment of the fee.

92. Reasonable clearness, precision, and certainty should be required in the papers; and substantial justice and all practicable dispatch is expected in the decisions.

93. The word "consul" is intended to include the consul-general, and any vice-consul or deputy-consul actually exercising the consular power at any consulate, unless the sense requires a more limited construction.

94. Each associate in a consular trial shall, before entering on his duties, be sworn by the consul. Before taking the oath, he may be challenged by either party, and for sufficient cause excused and another drawn.

95. Consuls will always preserve order in court, punishing summarily any contempt committed in their presence or any refusal to obey their lawful summons or order, by imprisonment not exceeding twenty-four hours, or by fine not exceeding $50 and costs.

96. Every party to a civil or criminal proceeding may be heard in person, or by attorney of his choice, or by both; but the presence of counsel shall be under the exclusive control and discretion of the consul.

97. The accounts of the consular courts shall be kept in United States currency; and every order of deposit, decree of costs, taxation of fees, and, generally, every paper issuing originally from the court, shall be expressed in dollars and cents, and satisfied in United States metallic currency, or its equivalent.

XVII. FEES.

[98–105, Table of fees, omitted.]

XVIII. PROVISO.

106. All decrees heretofore issued by authority of the commissioners and ministers of the United States to China which are inconsistent in whole or in part with the provisions of this decree are hereby annulled, and those portions are henceforth void and of no effect; and the promulgation of these rules abrogates no authority hitherto lawfully exercised by consuls in China not inconsistent herewith.

[Forms omitted.]

[Signed] ANSON BURLINGAME.

PEKING, *April 23, 1864.*

2. SAME, SUMMONS TO ABSENTEES, 1881.

I. In civil proceedings between American citizens in the consular courts in China, the service of summons upon the defendant, if he is found within the Empire of China, shall be personal; that is, the copy

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of the complaint and summons duly certified by a marshal of any consular court in China shall be delivered into the hands of the person to be served. The officer so serving the summons shall certify the same to the consul before whom the suit is brought.

II. When the defendant has removed from or is absent from the Empire, or conceals himself therein to avoid the service of summons and the fact appears by affidavit to the satisfaction of the consul, and it also appears by such affidavit or by the verified complaint on file that a good cause of action exists against the defendant or that he is a necessary party to the action, such consul may make an order that the service be made by publication of the summons. Such order shall direct the publication to be made in a newspaper of general circulation (to be named) for such length of time as may be reasonable, in not less than six issues of such paper if a daily, and in not less than four issues if a weekly. Such publication shall be made in a newspaper published nearest to the consulate where the suit or proceeding is pending at least five months before the time fixed for the trial by the consul. In case of publication, when the residence of a nonresident or absent defendant is unknown, the consul shall direct a copy of the complaint and summons, duly certified, and addressed to the person to be served at his supposed place of residence, to be deposited in the post-office by the marshal of said court.

[Signed] JAMES B. ANGELL.

PEKING, *May 26, 1881.*

8. SAME, ARRESTS, AND RENDITIONS, 1897.

Whenever a criminal action is pending in any consular district in China against a citizen of the United States of America who may be found in any other consular district in China, it shall be lawful for the consul before whom the action is pending to issue his warrant for the arrest of such citizen wherever he may be found in China.

Such warrant shall be visaed by the consul in whose district the accused may be found, and thereupon the accused shall be arrested by the United States marshal of the district in which he may be found and shall be transported to the consular district in which the case against him is pending, for trial before the consular court thereof.

[Signed] CHARLES DENBY.

PEKING, *September 15, 1897.*

EXHIBIT H.

OPINIONS OF ATTORNEYS-GENERAL DEALING WITH QUESTIONS OF EXTRATERRITORIALITY.

Isaac Toucey. Opin. Atty. Gen., 67–9, Jan. 31, 1849. Place and manner of executing criminal penalties.

Caleb Cushing. 6 Opin. Atty. Gen., 59–60, June 28, 1853. Expense of transferring native Chinese pirates to Hongkong lawfully payable from judiciary fund.

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Caleb Cushing. 7 Opin. Atty. Gen., 18–32, Nov. 4, 1854. Authority of consuls in non-Christian states to solemnize marriage.

Caleb Cushing. 7 Opin. Atty. Gen., 186–229, May 25, 1855. History of the missions to negotiate treaties with the Barbary States, Turkey, and China.

Caleb Cushing. 7 Opin. Atty. Gen., 342–9, July 14, 1855. Fundamental differences between consular authority in Christian and non-Christian states explained.

Caleb Cushing. 7 Opin. Atty. Gen., 495–522, Sept. 19, 1875. General explanation of the treaty of 1844 with China and of the act of 1848, with special reference to collection of customs in China, to the appellate jurisdiction of the minister to China, and the legal competency of vice-consuls to act judicially.

Caleb Cushing. 7 Opin. Atty. Gen., 565–71, Oct. 23, 1855. Jurisdiction by usage in civil cases in Turkey.

Caleb Cushing. 8 Opin. Atty. Gen., 380–7, Feb. 11, 1857. Transfer to the United States of persons accused of crime on the high seas.

J. S. Black. 9 Opin. Atty. Gen., 294–5, Mar. 16, 1859. Restriction of the judicial authority of the commissioner to China to the five ports.

Edward Bates. 10 Opin. Atty. Gen., 250–2, May 12, 1862. Salary of a marshal began to run from time of entering on duties preliminary to departure from the United States.

G. H. Williams. 14 Opin. Atty. Gen., 522–4, Feb. 4, 1875. Sentences of imprisonment can not legally be executed beyond jurisdiction of the court which pronounced them.

A. H. Garland. 18 Opin. Atty. Gen., 219–20, July 6, 1885. Authority to send an agent to try an offender in a barbarous country.

O. W. Chapman (Acting). 19 Opin. Atty. Gen., 377–81, Aug. 14, 1889. The President has no authority to order the removal of a prisoner from one prison to another.

W. H. H. Miller. 20 Opin. Atty. Gen., 92–3, May 17, 1891. Acting consuls have no judicial authority.

W. H. H. Miller. 20 Opin. Atty. Gen., 391–4, May 7, 1892. A sentence of imprisonment in China can be served out anywhere in China.

P. C. Knox. 23 Opin. Atty. Gen., 608–14, Jan. 3, 1902. Oath of a foreign subject appointed as marshal.

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APPENDIX II.

CITIZENSHIP OF THE STATES OF THE UNION.

DEFINITIONS OF CITIZENSHIP OF A STATE.

"A citizen of the United States residing in any State of the Union is a citizen of that State." Marshall, C. J., Gassies *v.* Ballon (1832), 6 Pet., 761, 762. This principle is confirmed by Article XIV of the amendments to the Constitution in the declaration that all persons born or naturalized in the United States and subject to the jurisdiction thereof are "citizens of the United States and of the State wherein they reside." As regards citizenship of a particular State this definition is incorporated in the constitutions and statutes of various of the States. In Kentucky (Stats., by Carroll (1903), sec. 332); Maine (Rev. Stats. (1903), ch. 5, sec. 1), and West Virginia (Const., Art. II, sec. 3), it is incorporated in similar phraseology. In Georgia (Const., Art. I, sec. 1, par. 25), Massachusetts (Rev. Laws (1902), Ch. I, sec. 1), and Mississippi (Const., Art. III, sec. 8), all citizens of the United States resident or domiciled in the State are declared to be citizens thereof.

In California (Polit. Code, sec. 51), as also in North Dakota (Polit. Code, sec. 11), all persons born in the State and residing therein, except the children of transient aliens and of alien public ministers and consuls, and all persons born out of the State who are citizens of the United States and residing within the State, are declared to be citizens of the State. Save the clause expressly excepting from citizenship children of public ministers and consuls born in the State, the same provision is found in the laws of Montana (Polit. Code, sec. 71). In Vermont citizens of the United States and persons who have become citizens of the State by virtue of the constitution or laws are, while residing in the State, citizens thereof. (Stats. (1894), sec. 60.) In Virginia it is declared that all persons born in the State, all persons born in any other State of the Union, who may be or become residents of the State; all aliens naturalized under the laws of the United States who may be or become residents of the State; all persons who have obtained a right to citizenship under former laws; and all children, wherever born, whose father, or if he be dead, whose mother, shall be a citizen of the State at the time of the birth of such children, shall be deemed citizens of the State (Code (1904, by Pollard), sec. 39). See Exhibit A.

RESIDENCE.

A person may, under the fourteenth amendment, be a citizen of the United States without being a citizen of a particular State. An important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, while

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it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. Miller, J., Slaughter-house cases, 16 Wall., 36, 74. By Article III, sec. 2, of the Constitution, the judicial power of the United States is extended to controversies between "citizens of different States." The test of citizenship for the purpose of Federal jurisdiction under this section is domicil, which implies a fixed home and abode at the place of residence, with the animus manendi. Poppenhauser *v.* Comb. Co. (C. C.), 14 Fed. Rep., 707; Sharon *v.* Hill (C. C.), 26 Fed. Rep., 337; McDonald *v.* Flour Mills Co. (C. C.), 31 Fed. Rep., 577; Nichols *v.* Nichols (C. C.), 92 Fed. Rep., 1; Haskell *v.* Bailey (C. C. A.), 63 Fed. Rep., 873; Collins *v.* City of Ashland (D. C.), 112 Fed. Rep., 175; Eisele *v.* Oddie (C. C.), 128 Fed. Rep., 941. It is essential that the citizenship of the parties, or the facts which in legal intendment constitute it, should be distinctly and positively averred in the pleadings, or should appear with equal distinctness in other parts of the record; and the mere averment that a party is a resident of, or resides in, a particular State is not an averment of citizenship in that State for the purposes of jurisdiction. Parker *v.* Overman, 18 How., 137; Robertson *v.* Cease, 97 U. S., 646; Continental Ins. Co. *v.* Rhoads, 119 U. S., 237; Everhart *v.* Huntsville College, 120 U. S., 223; Menard *v.* Goggan, 121 U. S., 253; Timmons *v.* Elyton Land Co., 139 U. S., 378; Denny *v.* Pironi, 141 U. S., 121; Wolfe *v.* Hartford L. & A. Ins. Co., 148 U. S., 389; Cooper *v.* Newell, 155 U. S., 532; Steigleder *v.* McQuesten, 198 U. S., 141, 143.

"The place where a person lives is taken to be his domicil until facts adduced establish the contrary, and a domicil when once acquired is presumed to continue until it is shown to have been changed." Fuller, C. J., Anderson *v.* Watt (1891), 138 U. S., 694, 706. "The intention and the act must concur in order to effect such a change of domicil as constitutes a change of citizenship." Harlan, J., Morris *v.* Gilmer (1889), 129 U. S., 315, 328. "There must be an actual, not pretended, change of domicil; in other words, the removal must be 'a real one, animo manendi, and not merely ostensible.'" Id. citing Case *v.* Clarke, 5 Mason, 70. "Among the circumstances usually relied upon to establish the animus manendi are: Declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence, and a place of business." Swayne, J., Mitchell *v.* United States (1874), 21 Wall., 350, 353.

The rules of the several States determining what constitutes a residence sufficient to establish citizenship are chiefly to be found in the decisions of the courts. As codified in California (Polit. Code, sec. 52), Montana (Polit. Code, sec. 72), and North Dakota (Polit. Code, sec. 12), they are as follows: Every person has, in law, a residence. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose. There can be only one residence. A residence can not be lost until another is gained. The residence of the father during his life, and after his death the residence of the mother while she remains unmarried, is the residence of the unmarried minor children. The residence of the husband is presumptively [in California the word "presumptively" does not appear] the residence of the wife. The residence of an unmarried minor who has a parent living can not be changed by either his own act

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or that of his guardian. Residence can be changed only by the union of act and intent.

"Two considerations must be kept steadily in view, and these are, 1, that every person must have a domicil somewhere; and 2, that a man can have only one domicil for one purpose at one and the same time. Every one has a domicil of origin, which he retains until he acquires another, and the one thus acquired is in like manner retained." Shaw, C. J., Abington *v.* North Bridgewater (1839), 23 Pick., 170, 177. "In regard to questions of citizenship, and the disposition of property after death, every person must have a domicil. * * * For every one is presumed to be a subject of some government while living, and the law of some country must control the disposition of his property upon his decease." Davis, J., Gilman *v.* Gilman (1863), 52 Me., 165, 174. "A man may have more than one place of residence, but he can have but one domicil, and can hold citizenship in but one State." Beck, J., Savage *v.* Scott (1876), 45 Io., 130, 133. "Actual residence, that is, personal presence in a place, is one circumstance to determine the domicil, or the fact of being an inhabitant; but it is far from being conclusive." Shaw, C. J., Sears *v.* City of Boston (1840), 1 Met., 250, 251.

"The habitation fixed in any place, without any present intention of removing therefrom, is the domicile." Parker, J., Putnam *v.* Johnson (1813) 10 Mass., 488, 501. "The factum and the animus must concur in order to establish a domicil. Harvard College *v.* Gore, 5 Pick., 370. The latter may be inferred from proof of the former. But evidence of a mere intent can not establish the fact of domicil." Bigelow, J. (1856), Holmes *v.* Greene, 7 Gray, 299, 301. "Change of domicil consists of an act done, with an intent. The act is an actual change of residence. The intent to effect the change must be to acquire a new domicil, either permanent in purpose or of indefinite duration." Stone, C. J., Young *v.* Pollak (1888), 85 Ala., 439, 444; Caldwell *v.* Pollak (1890), 91 Ala., 353, 357. "Residence being a visible fact is not usually in doubt. The *intention to remain* is not so easily proved. Both must concur in order to establish a domicil. * * * And, as both are known to be requisite in order to subject one to taxation or to give him the right of suffrage, any resident who submits to the one or claims the other may be presumed to have such intention." Davis, J., Gilman *v.* Gilman (1863), 52 Me., 165, 177. See also Thomas *v.* Warren (1895), 83 Md., 14, 20. "The question what constitutes domicil is mainly a question of fact, and the element of intention enters into it. Personal absence for a while does not necessarily change one's domicil, and personal presence in a place for a somewhat prolonged period does not necessarily establish domicile there." Allen, J., Olivieri *v.* Atkinson (1897), 168 Mass., 28, 29. One may acquire a domicil by the residence of a day, if to the fact of residence be superadded the requisite intention. Littlefield *v.* Brooks, 50 Me., 475; Parsons *v.* Bangor, 61 Me., 457; Stockton *v.* Staples, 66 Me., 197. "An absence for months, or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be an abandonment." Scholfield, J., Kreitz *v.* Behrensmeyer (1888), 125 Ill., 141, 195. "A temporary residence does not change its character by lapse of time." Park, J., Easterly *v.* Goodwin (1868), 35 Conn., 279, 286. "A man who has a domicile in Indiana

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does not lose it by going to Colorado and engaging in business there, nor by forming an intention that he will *ultimately* make that his residence; an intention to change residence at some future time is not a present change of residence." Bicknell, C. C., Astley *v.* Capron (1883), 89 Ind., 167, 177.

Evidence that a person had transacted business in another State for two years is insufficient to show that a domicile has been established in the absence of declarations of such an intention or evidence of the exercise of political rights, payment of personal taxes, or selection of a place of residence or business. Tuttle *v.* Wood (1902), 115 Iowa, 507. Continuous, uninterrupted declarations, accompanied by the fact of residence, the removal of personal property, and the exercise of political rights establish a change of domicil. Marks *v.* Germania Savings Bank (1903), 110 La., 659. For the various indicia of the animus manendi, see American Notes, by J. B. Moore, in Dicey on the Conflict of Laws, page 165; and for the application of the rules of domicil in State courts see brief digests in 48 American State Reports, 711 note; 59 American Decisions, 111 note; 32 id., 427 note; 2 Lawyers' Reports, Annotated, 203 note, and 13 id., 161 note.

RELINQUISHMENT OF CITIZENSHIP.

The right to relinquish citizenship of one State by acquiring it in another is recognized in the rules of domicile. "Allegiance to the State may be renounced by a change of residence." California, Polit. Code, sec. 56; Montana, Polit. Code, sec. 82; North Dakota, Polit. Code, sec. 15. In the statutes of Virginia is found the following provision: "Whenever a citizen of this State, by deed in writing, executed in the presence of and subscribed by two witnesses, and by them proved in the court of the county or corporation where he resides, or by open verbal declaration, made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this State, and shall depart out of the same, such person shall, from the time of such departure, be considered as having exercised his right of expatriation, so far as regards this State, and shall thenceforth be deemed no citizen thereof." It is further provided that when any "citizen of this State, being twenty-one years of age, shall reside elsewhere, and in good faith become the citizen of some other State of this Union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another State, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this State." But no such relinquishment of citizenship can be accomplished while the United States is at war with a foreign power. (Code (1904 by Pollard), secs. 40–42.) These provisions are found in substantially the same terms in the statutes of Kentucky (Stats., by Carroll (1903), sec. 333.) The statutes of Georgia likewise contain an express declaration on the right of expatriation with a view to become a citizen of another State or of a foreign power. (Civil Code (1895), secs. 1805–7.)

In the Civil Code (art. 46) of Louisiana it is provided that a "voluntary absence of two years from the State, or the acquisition of residence in any other State of this Union or elsewhere, shall forfeit a domicile within this State." It has been held that civil as well as political domicil is forfeited by this voluntary absence. Interdic-

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tion of Dumas (1880), 32 La. Ann., 679. The principle that a native domicil, in case the new domicil has been acquired merely by residence without a renunciation of the original allegiance, reverts as soon as the person begins to execute an intention of returning, i. e., from the time that he puts himself in motion bona fide to quit the country sine animo revertendi, has no application as between the States of the Union where both the native and acquired domicil are under the same national jurisdiction. Park, J., First National Bank *v.* Balcom (1868), 35 Conn., 351, 357.

ELECTORS.

It was said by Mr. Justice McLean, in Shelton *v.* Tiffin (1848), 6 How., 163, 185, that "on a change of domicil from one State to another, citizenship may depend upon the intention of the individual. But this intention may be shown more satisfactorily by acts than declarations. An exercise of the right of suffrage is conclusive on the subject; but acquiring a right of suffrage, accompanied by acts which show a permanent location, unexplained, may be sufficient."[a] Minimum periods are prescribed by the States during which a person must have resided therein to be entitled to exercise the privilege of the elective franchise.[b] In Arkansas, Indiana, Kansas, Missouri, Nebraska, Ore-

[a] See also opinion of Mr. Justice Curtis in Scott *v.* Sandford, 19 How., 393, 581. That voting is not conclusive as to domicil, see the leading case of Easterly *v.* Goodwin (1868), 35 Conn., 279.

[b] Alabama, 2 years, Const. (1901), Art. VIII, sec. 178; Arkansas, 12 months, Const., Art. XXI, as amended (1893); California, 1 year, Const., Art. II, sec. 1, as amended (1894); Colorado, 12 months, Const., Art. VII, as amended (1902); Connecticut, 1 year, Const., Art. VIII of amendments (1845); Delaware, 1 year, Const. (1897), Art. V, sec. 2; Florida, 1 year, Const., Art. VI, sec. 1, as amended (1894); Georgia, 1 year, Const. (1877), Art. II, sec. 1, par. 2; Idaho, 6 months, Const., Art. VI, sec. 2, as amended (1896); Illinois, 1 year, Const. (1870), Art. VII, sec. 1; Indiana, 6 months, Const., Art. II, sec. 2, as amended (1881); Iowa, 6 months, Const., Art. II, sec. 1. as amended (1868); Kansas, 6 months, Const. (1859), Art. V, sec. 1; Kentucky, 1 year, Const. (1891), sec. 145; Louisiana, 2 years, Const. (1898), Art. 197, sec. 1; Maine, 3 months, Const. (1819), Art. II, sec. 1; Maryland, 1 year, Const. (1867), Art. I, sec. 1; Massachusetts, 1 year, Const., Art. III of amendments (1821), Rev. Laws (1902), ch. 134, sec. 1; Michigan, 6 months, Const., Art. VII, sec. 1, as amended (1894); Minnesota, 6 months, Const., Art. VII, sec. 1, as amended (1896); Mississippi, 2 years, Const. (1890), sec. 241; Missouri, 1 year, Const. (1875), Art. VIII, sec. 2; Montana, 1 year, Const. (1889), Art. IX, sec. 2; Nebraska, 6 months, Const. (1875), Art. VII, sec. 1; Nevada, 6 months, Const., Art. II, sec. 1, as amended (1880); New Hampshire, see Const., Art. II, Bill of Rights, Art. 27, pt. 2, and Pub. Stats., ch. 31, where no specific time is prescribed; New Jersey, 1 year, Const. (1844), Art. II, sec. 1; New York, 1 year, Const. (1894), Art. II, sec. 1; North Carolina, 2 years, Const., Art. VI, sec. 2, as amended (1902); North Dakota, 1 year, Const. (1889), Art. II of amendments; Ohio, 1 year, Const. (1851), Art. V, sec. 1; Oregon, 6 months, Const. (1857), Art. II, sec. 2; Pennsylvania, 1 year (a person having previously been an elector or native-born citizen of the State, who has removed therefrom and returned, 6 months), Const., Art. VIII, sec. 1, as amended (1901); Rhode Island, 2 years (owners of real property, 1 year), Const. (1842), Art. II, sec. 1, Art. VII of amendments (1888); South Carolina, 2 years (ministers, and teachers of public schools, 6 months), Const. (1895), Art. II, sec. 4; South Dakota, 6 months, Const. (1889), Art. VII, sec. 1; Tennessee, 12 months, Const. (1870), Art. IV, sec. 1; Texas, 1 year, Const., Art. VI, sec. 2; Utah, 1 year, Const. (1895), Art. IV, sec. 2; Vermont, 1 year, Const. (1793), ch. 2, sec. 39, Stats. (1894), sec. 61; Virginia, 2 years, Const. (1902), Art. II, sec. 18; Washington, 1 year, Const., Art. VI, sec. 1, as amended (1896); West Virginia, 1 year, Const. (1872), Art. IV, sec. 1; Wisconsin, 1 year, Const., Art. III, sec. 1, as amended (1882); Wyoming, 1 year, Const. (1889), Art. VI, sec. 2.

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gon, South Dakota, Texas, and Wisconsin persons who have declared their intention to become citizens of the United States are intrusted with the privilege.

It has been held in the courts of Wisconsin and Louisiana that a person who, by the constitution of the State, is an elector may be a citizen thereof although not a citizen of the United States. In re Wehlitz (1863), 16 Wis., 443; ex rel. Dist. Att. *v.* Fowler (1889), 41 La. Ann., 380. In the latter case it was said by McEnery, J., "A person may be a citizen of the State, and may not be invested with electoral power. It is, however, difficult to conceive how a person can be an elector and not a citizen of the community in which he exercises the right to vote. The State, in the exercise of its sovereignty can confer the right to vote, can make an alien an elector, and electoral power when thus bestowed and exercised becomes one of the most important duties and the highest and proudest privilege of citizenship. The elector is, therefore, one of the sovereign people, a member of the civil State, and entitled to all its privileges." See also Settegast *v.* Schrimpf (1871–72), 35 Tex., 323, 342. The former constitution (1875) of Alabama expressly declared that all persons resident in the State, born in the United States, or naturalized, or who had legally declared their intention to become citizens of the United States, were citizens of the State, with equal civil and political rights (Art. I, sec. 2).

On the other hand, it has been decided in the circuit court of appeals that, as regards jurisdiction of Federal courts, a person who has merely declared his intention to become a citizen is an alien, although he has voted for Members of Congress and State and county officers conformably with the constitution and laws of the State wherein he resides. City of Minneapolis *v.* Reum (1893), 56 Fed. Rep., 576. So, also, Mr. Justice Miller, sitting in circuit, in the case of Lanz *v.* Randall (1876), 4 Dill., 425, 429, said: "I am of opinion that no State can make the subject of a foreign prince a citizen of the State in any other mode than that provided by the naturalization laws of Congress; that when the Constitution (Art. I, sec. 8), says that Congress shall have power 'to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States,' it designed these rules, when established, to be the *only rules* by which a citizen or subject of a foreign government could become a citizen or subject of one of the States of this Union, and thereby owe allegiance to such State, and to the United States, and cease to owe it to his former government."

It is not doubted that a State may invest any person within its jurisdiction with all the rights and privileges incident to citizenship. The fundamental rights as incorporated in the bills of rights in the constitutions of the States are, in main, guaranteed to all persons. The last substantial property right usually to be accorded to a person of foreign nationality is the right unqualifiedly to acquire, hold, and dispose of real estate. By constitutional guarantee in Alabama (Art. I, sec. 34), Arkansas (Art. II, sec. 20), Colorado (Art. II, sec. 27), Florida (Dec. of Rights, sec. 18), Iowa (Art. I, sec. 22), Michigan (Art. XVIII, sec. 13), Nebraska (Art. I, sec. 25), Nevada (Art. I, sec. 16), Oregon (white foreigners, Art. I, sec. 31; Art. XV, sec. 8), South Dakota (Art. VI, sec. 14), West Virginia (Art. II,

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sec. 5), Wisconsin (Art. I, sec. 15), and Wyoming (Art. I, sec. 29) a resident alien, not an enemy, has the same rights in respect of possession, enjoyment, and descent of real estate as citizens. In other States this equality is secured by statute.[a]

EXHIBIT A.

CALIFORNIA.

SEC. 50. *Who are the people.*—The people, as a political body, consist:

1. Of citizens who are electors.
2. Of citizens not electors.

SEC. 51. *Who are citizens.*—The citizens of the State are:

1. All persons born in this State and residing within it, except the children of transient aliens and of alien public ministers and consuls.
2. All persons born out of this State who are citizens of the United States and residing within this State.

SEC. 52. *Residence, rules for determining.*—Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can only be one residence.
3. A residence can not be lost until another is gained.
4. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor child.
5. The residence of the husband is the residence of the wife.
6. The residence of an unmarried minor who has a parent living can not be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

SEC. 54. *All persons within the State subject to its jurisdiction.*—Every person while within this State is subject to its jurisdiction and entitled to its protection.

SEC. 55. *Allegiance.*—Allegiance is the obligation of fidelity and obedience which every citizen owes to the State.

SEC. 56. *Allegiance may be renounced.*—Allegiance may be renounced by a change of residence.

SEC. 57. *Persons not citizens.*—Persons in the State not its citizens are either:

1. Citizens of other States; or
2. Aliens.

SEC. 58. *Eligibility to office.*—Every elector is eligible to the office for which he is an elector, except where otherwise specially provided; and no person is eligible who is not such an elector, except when otherwise specially provided.

SEC. 59. *Rights and duties of citizens not electors.*—An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

SEC. 60. *Rights and duties of citizens of other States.*—A citizen of the United States, who is not a citizen of this State, has the same rights and duties as a citizen of this State not an elector.—Political Code, Part I, Titles II and III.

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[a] Connecticut (Gen. Laws (1902), sec. 4410), Georgia (Civil Code (1895), sec. 1816), Maine (Rev. Stats. (1903), ch. 75, sec. 2), Maryland (Pub. Gen. Laws (1904), Art. III), Massachusetts (Rev. Laws (1902), ch. 134, sec. 1), Mississippi (Code (1892), sec. 2439), New Hampshire (Pub. Stats., ch. 137, sec. 16), New Jersey (Rev. Stats., p. 6; Gen. Laws, vol. I, p. 23), North Carolina (Revisal of 1905, secs. 182, 183, 1692), North Dakota (Civil Code, secs. 170, 794), Ohio (Bates's Annotated Stats., sec. 4173), Rhode Island (Gen. Laws (1896), ch. 201, sec. 4), Tennessee (Code by Shannon, sec. 3659), Texas (Rev. Stats. (1895), Art. 10), Virginia (Code (1904, by Pollard), sec. 43).

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GEORGIA.

All citizens of the United States, resident in this State, are hereby declared citizens of this State; and it shall be the duty of the general assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.—Constitution (1877), Art. I, sec. 1, par. 25.

SEC. 1803 (1652). *Division of natural persons.*—Natural persons are distinguished, according to their rights and status, into: 1, citizens; 2, residents not citizens; 3, aliens; 4, persons of color.

SEC. 1804 (44). *Who are citizens.*—All citizens of the United States, resident in this State, are hereby declared citizens of this State.

SEC. 1805 (46). *Citizenship may be renounced.*—Except in time of war, every citizen shall have the right of expatriation, with a view to become a citizen of another State or country not a part of the United States with which this State is at peace. The declaration or avowal of such intention, accompanied by actual removal, is held a renunciation of all his rights and duties as a citizen.

SEC. 1806 (47). *When citizenship ceases.*—Until citizenship is acquired elsewhere, the person continues a citizen of Georgia and of the United States.

SEC. 1807 (48). *Citizenship again acquired.*—If a person, having been thus expatriated, acquires citizenship under some foreign power, he and his descendants, who go with him for the purpose of residence, can be citizens of this State again only after a residence and taking the oath of allegiance, as in case of other foreigners.

SEC. 1808 (1654). *Rights of.*—Among the rights of citizens are the enjoyment of personal security, of personal liberty, private property, and the disposition thereof, the elective franchise, the right to hold office unless disqualified by the Constitution and laws, to appeal to the courts, to testify as a witness, to perform any civil function, and to keep and bear arms.

SEC. 1809 (1655). *Exercise thereof.*—All citizens are entitled to exercise all their rights as such, unless specially prohibited by law.

SEC. 1810 (1656). *Females.*—Females are not entitled to the privilege of the elective franchise; nor can they hold any civil office or perform any civil functions, unless specially authorized by law; nor are they required to discharge any military, jury, police, patrol, or road duty.

SEC. 1811 (1657). *Minors.*—The law prescribes certain ages at which persons shall be considered of sufficient maturity to discharge certain civil functions, to make contracts, and to dispose of property. Prior to those ages they are minors, and are for that disability unable to exercise these rights as citizens.

SEC. 1812 (1658). *Insane persons.*—All persons *non compos mentis*, either from birth or from subsequent causes, constantly or periodically, or from age, infirmity, drunkenness, or otherwise incapable of managing their affairs, have their persons and estates, or either of them, placed in the control of guardians. Such persons retain all the rights of citizens which they have the capacity to enjoy, and which are compatible with their situation.

SEC. 1813 (1659). *Rights of citizens of the United States.*—Such citizens of the other States of this Union as are recognized as citizens of the United States by the Constitution thereof shall be entitled, while residents of this State, to all the rights of citizens thereof, except the elective franchise and the right to hold office, and to perform such civil functions as are confined by law to citizens of this State.—Code (1896), secs. 1803–1813.

KENTUCKY.

SEC. 332. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, and who reside in the Commonwealth of Kentucky, shall be deemed citizens thereof.

SEC. 333. Whensoever any citizen of this State, by deed in writing in the presence of and subscribed by two witnesses, and acknowledged or proved in the county court of the county in which he resides, or by open declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this State, and shall depart out of the same with the intention, in good faith, to remain absent therefrom, such person shall, from the time of his departure, be considered as having exercised his right of expatri-

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ation so far as regards this State, and shall not thenceforth be deemed a citizen thereof. When any citizen of this State shall reside elsewhere and, in good faith, become a citizen of some other State of this Union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another State or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this State. No act of any citizen under this section shall have any effect if done while the United States shall be at war with a foreign power.—Chap. 19, Articles I and II, secs. 332 and 333, Kentucky Statutes by Carroll (1903).

MAINE.

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.—Revised Statutes (1903), ch. 5, sec. 1.

MASSACHUSETTS.

All persons who are citizens of the United States and who are domiciled in this Commonwealth are citizens thereof.—Revised Laws, 1902, ch. 1, sec. 1.

MISSISSIPPI.

SECTION 8. All persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi.—Constitution (1890), Art. III, sec. 8.

MONTANA.

SEC. 70. The people, as a politicel body, consist:

1. Of electors.
2. Of citizens not electors.

SEC. 71. The citizens of the State are:

1. All persons born in this State and residing within it, except the children of transient aliens.
2. All persons born out of this State who are citizens of the United States and residing within this State.

SEC. 72. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can only be one residence.
3. A residence can not be lost until another is gained.
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.
5. The residence of the husband is presumptively the residence of the wife.
6. The residence of an unmarried minor, who has a parent living, can not be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

SEC. 80. Every person while within the jurisdiction of this State is entitled to its protection.

SEC. 81. Allegiance is the obligation of fidelity and obedience which every citizen owes to the State.

SEC. 82. Allegiance may be renounced by a change of residence.

SEC. 83. Persons in the State not its citizens are either:

1. Citizens of other States; or
2. Aliens.

SEC. 84. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

SEC. 85. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

SEC. 86. A citizen of the United States who is not a citizen of this State has the same rights and duties as a citizen of this State not an elector.—Political Code, secs. 70, 71, 72, 80 to 86.

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NORTH DAKOTA.

SEC. 10. *Who are the people.*—The people, as a political body, consist:
1. Of citizens who are electors.
2. Of citizens not electors.

SEC. 11. *Who are citizens.*—The citizens of the State are:
1. All persons born in this State and residing within it, except the children of transient aliens and of alien public ministers and consuls.
2. All persons born out of this State and who are citizens of the United States and residing within this State.

SEC. 12. *Residence, rules for determining.*—Every person has in law a residence. In determining the place of residence the following rules are to be observed:
1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence can not be lost until another is gained;
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living can not be changed by either his own act or that of his guardian;
7. The residence can be changed only by the union of act and intent.

SEC. 13. *All persons within the State subject to its jurisdiction.*—Every person while within this State is subject to its jurisdiction and entitled to its protection.

SEC. 14. *Allegiance.*—Allegiance is the obligation of fidelity and obedience which every citizen owes to the State.

SEC. 15. *Allegiance may be renounced.*—Allegiance may be renounced by a change of residence.

SEC. 16. *Persons not citizens.*—Persons in this State not its citizens are either—
1. Citizens of other States; or,
2. Aliens.

SEC. 17. *Eligibility to office.*—Every elector is eligible to the office for which he is an elector, except when otherwise specially provided; and no person is eligible who is not such an elector.

SEC. 18. *Rights and duties of citizens not electors.*—An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

SEC. 19. *Rights and duties of citizens of other States.*—A citizen of the United States who is not a citizen of this State has the same rights and duties as a citizen of this State not an elector.—Political Code, secs. 10–19. (Revision of 1905.)

VERMONT.

SEC. 60. Citizens of the United States and persons who have become citizens of this State by virtue of the constitution or laws are, while residing in the State, citizens thereof.—Vermont statutes (1894), sec. 60.

SEC. 899. In cases proper for the cognizance of the civil authority and the courts of judicature in this State, citizens of the United States shall be equally entitled to the privileges of law and justice with citizens of this State.—Vermont statutes (1894), sec. 899.

VIRGINIA.

SEC. 39. *Who are citizens.*—All persons born in this State, all persons born in any other State of this Union, who may be or become residents of this State; all aliens naturalized under the laws of the United States, who may be or become residents of this State; all persons who have obtained a right to citizenship under former laws; and all children, wherever born, whose father, or, if he be dead, whose mother, shall be a citizen of this State at the time of the birth of such children, shall be deemed citizens of this State.

SEC. 40. *How citizenship relinquished.*—Whenever a citizen of this State, by deed in writing, executed in the presence of and subscribed by two witnesses,

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and by them proved in the court of the county or corporation where he resides, or by open verbal declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this State, and shall depart out of the same, such person shall, from the time of such departure, be considered as having exercised his right of expatriation, so far as regards this State, and shall thenceforth be deemed no citizen thereof.

SEC. 41. *When suspended.*—When any citizen of this State, being twenty-one years of age, shall reside elsewhere, and in good faith become the citizen of some other State of this Union, or the citizen or subject of a foreign State or sovereign, he shall not, while the citizen of another State, or the citizen or subject of a foreign State or sovereign, be deemed a citizen of this State.

SEC. 42. *When relinquishment not allowed.*—No such act of becoming the citizen or subject of a foreign State or sovereign, and no act under section forty shall have any effect, if done while this State, or the United States, shall be at war with any foreign power.—Code of Virginia (1904, by Pollard), secs. 39–42; Code 1849, ch. 8, secs. 1, 3, and 4.

WEST VIRGINIA.

The powers of government reside in all the citizens of the State and can be rightfully exercised only in accordance with their will and appointment.

All persons residing in this State, born, or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of this State.

Every citizen shall be entitled to equal representation in the government, and, in all apportionments of representation, equality of numbers of those entitled thereto, shall, as far as practicable, be preserved.—Constitution (1872), Art. II, secs. 2, 3, and 4.

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APPENDIX III.

LAWS OF FOREIGN COUNTRIES.

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CIRCULAR INSTRUCTION.

DEPARTMENT OF STATE,
WASHINGTON, *July 9, 1906.*

To the diplomatic and certain consular officers of the United States.

GENTLEMEN: I append hereto a copy of an order[a] of the Department of State, dated July 3, constituting James B. Scott, esq., Solicitor for the Department of State, David Jayne Hill, esq., this Government's minister to the Netherlands, and Gaillard Hunt, esq., chief of the passport bureau of this Department, a board to inquire into the laws and practice regarding citizenship, expatriation, and protection abroad and to report thereon before December next.

The board desires to ascertain:

1. The laws relating to citizenship in the country in which you reside;

2. The means by which citizenship in that country is lost;

3. Whether or not the law of that country authorizes the renunciation of citizenship, and, if so, the conditions for the reacquisition of the citizenship thus renounced;

4. Whether, and how far, residence in foreign parts may affect the citizenship of origin;

5. And, finally, the practice of the Government to which you are accredited in protecting its citizens permanently residing in other countries.

The law relating to naturalization and the acquisition of citizenship is also desired.

In answering this instruction you may furnish publications and appropriate references to them, together with transcripts from the laws and other recognized authorities.

You will reply to this instruction at the earliest practicable moment.

I am, gentlemen, your obedient servant,

ROBERT BACON,
Acting Secretary.

[a] See supra p. 4.

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ARGENTINE REPUBLIC.

CONSTITUTION.*

[Translation.]

ART. 8. The citizens of each province enjoy in the other provinces all the rights, privileges, and immunities inherent in citizenship. * * *

ART. 20. Foreigners shall enjoy in the territory of the nation all the civil rights of citizens. They may carry on their industry, commerce, or profession, own real estate, buy and sell it, navigate the rivers and coasts, exercise their religion freely, make wills, and marry, all in conformity with the laws. They are not obliged to acquire citizenship, nor to pay extraordinary compulsory taxes. They may become naturalized by residing two years continuously in the nation, but the authorities may curtail this period in favor of one who requests it on the strength of services proven to have been rendered to the Republic.

ART. 21. Every Argentine citizen is obliged to bear arms in defense of the country and of this constitution, in conformity with the laws enacted for this purpose by Congress and with the decrees of the national executive. Naturalized citizens are free to perform this service or not during a period of ten years from the date on which they obtain their citizenship papers.

ART. 67. The Congress shall have power:

* * * * * * *

11. To enact * * * general laws for the whole nation regarding naturalization and citizenship, based on the principle of citizenship by nativity. * * *

ART. 108. The provinces shall not * * * pass especially laws on citizenship and naturalization. * * *

[Enclosure in despatch from Mr. Beaupré, minister to Argentine Republic, No. 441 November 3, 1906.—Translation.]

LAW OF 1869.

Law No. 346 of October 8 on Citizenship.

The Senate and Chamber of Deputies.

TITLE I.—*Argentines.*

ART. 1. The following are Argentines:

1. All persons born or who may be born in the territory of the Republic, whatever be the nationality of their parents, with the exception of the children of foreign ministers and members of legations residing in the Republic.

2. The children of native Argentines who having been born in a foreign country choose the citizenship of origin.

3. Persons who are born in the legations and on the warships of the Republic.

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*Text as printed in Códigos y Leyes Usuales de la República Argentine (Buenos Aires, 1894), p. 1.

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4. Persons who were born in the Republics which formed a part of the United Provinces of the Rio de la Plata before their emancipation, and who have resided in the territory of the nation, provided they declare their desire to be Argentines.

5. Persons who are born on neutral seas under the Argentine flag.

TITLE 2.—*Citizens by naturalization.*

ART. 2. The following are citizens by naturalization:

1. Foreigners over eighteen years of age who reside two years continuously in the Republic and declare their desire to be such before the federal district judges.

2. Foreigners who, whatever be the period of their residence, prove before the said judges either of the following services:

1. Having honorably held offices under the nation or the provinces, within or without the Republic.

2. Having served in the army or navy or having taken part in any warlike action in the defense of the nation;

3. Having established in the country a new industry or introduced a useful invention.

4. Operating or constructing railroads in any of the provinces.

5. Forming a part of colonies already established or which may be established in future, whether in national territory or in that of the provinces, provided they possess some real estate therein.

6. Settling or peopling national territory within or without the present boundary lines.

7. Having married an Argentine woman in any one of the provinces.

8. Practicing therein the vocation of teacher in any branch of education or industry.

ART. 3. The son of a naturalized citizen who was a minor at the time of the naturalization of his father and was born in a foreign country, may obtain his citizenship papers from the federal judge by virtue of having enlisted in the national guard at the period prescribed by law.

ART. 4. The son of a citizen who is naturalized in a foreign country may, after the naturalization of his father, obtain his citizenship papers by coming to the Republic and enlisting in the national guard at the age prescribed by law.

TITLE 3.—*Procedure and requirements for obtaining citizenship papers.*

ART. 5. The children of native Argentines, born abroad, who choose the citizenship of origin, must prove before the proper federal judge that they are the children of Argentines.

ART. 6. Foreigners who have fulfilled the conditions mentioned in the preceding articles shall obtain naturalization papers, which shall be granted them by the federal district judge to whom they have applied therefor.

TITLE 4.—*The political rights of Argentines.*

ART. 7. Argentines who have attained the age of 18 years enjoy all the political rights conferred by the constitution and the laws of the Republic.

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ART. 8. Political rights shall not be exercised in the Republic by persons naturalized in a foreign country, by persons who have accepted office or honors from foreign governments without the permission of congress, by fraudulent bankrupts, or by persons who have received a sentence imposing an infamous penalty or the penalty of death.

ART. 9. Congress alone can grant rehabilitation to those who have lost the rights of citizenship.

TITLE 5.—*General provisions.*

ART. 10. No charge shall be made for citizenship papers or for performing any of the formalities connected with obtaining them.

ART. 11. The ministry of the interior shall send to all the district judges a sufficient number of printed copies of "citizenship papers," so that they may be issued under one and the same form.

TITLE 6.—*Transitory provisions.*

ART. 12. The children of a native-born Argentine and foreigners who are at present exercising the rights of Argentine citizenship are considered as native-born or naturalized citizens, respectively, without being subjected to any of the requirements established by this law, and having only to inscribe themselves in the National Civic Register.

ART. 13. All provisions contrary to the present law are hereby repealed.

ART. 14. Let the foregoing be communicated to the Executive.

BUENOS AIRES, *October 1, 1869.*

A true copy.

JUAN S. GOMEZ.

AUSTRIA-HUNGARY.

AUSTRIA.

GENERAL CIVIL CODE.[a]

[Translation.]

SEC. 28. The full enjoyment of civil rights is acquired by virtue of citizenship. Citizenship in these hereditary States is inherent in the children of an Austrian citizen by virtue of birth.

* * *

SEC. 29. Foreigners acquire Austrian citizenship by entering the public service; [by engaging in an industry the carrying on of which necessitates a regular domicile in the country;] by an uninterrupted residence of ten years in these States, provided the foreigner has not incurred punishment for any crime during this period.

[NOTE.]—"All citizens are equally eligible to public offices. Foreigners must acquire Austrian citizenship in order to hold such offices."—St. G. G. v. 21 Dec. 1867, Nr. 142 R. G. B., art. 3.

"The provision of sec. 29, according to which foreigners acquire Austrian citizenship by engaging in an industry the carrying on of which necessitate

[a] Edition by Dr. Joseph Baron von Schey, Vienna (1902).

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a regular domicil in the country is hereby abrogated."—k. Vdg. v. 27 April 1860, Nr. 108 R. G. B., sec. 1. Austrian citizenship shall be acquired by a foreigner after an uninterrupted residence of ten years "only when he has duly proven such residence to the authorities of his last place of residence, has taken the oath of allegiance before them or the proper court and has received a certificate as to this fact. However, a foreigner shall not be allowed to take this oath until the said authorities have become fully convinced that he has not only not incurred any punishment for a crime during the period mentioned, but that he has always observed a quiet and moral behavior, obeyed the laws and orders of the lwaful authorities, and never given good cause for suspicion or complaint by reason of his conduct or way of thinking."—Jhfd. v. 12, April, 1833, Nr. 2597 Y. G. S.

Foreign women acquire citizenship also by marriage to an Austrian citizen.—Hfd. v. 28, Feb., 1833, Nr. 2595 Y. G. S.

SEC. 30. Even without engaging in any industry or trade, and before ten years have elapsed, application for naturalization may be made to the civil authorities, who may grant it upon proof being furnished that the applicant possesses a fortune, or the ability to earn a livelihood, and is of good moral character.

SEC. 31. Austrian citizenship shall not be acquired by the mere possession or temporary utilization of a rural estate, house, or land, or by the establishment of a business or factory, or the participation in either, without personal residence in the territory of these States.

HUNGARY.

Law (L of the year 1879) relating to the acquisition and loss of Hungarian nationality.

[Translation.] *

§ 1. The nationality is one and the same in all the countries of the Hungarian Crown.

ACQUISITION OF NATIONALITY.

§ 2. Hungarian nationality can only be acquired—
(1) By descent.
(2) By legitimation (*per subsequens matrimonium*).
(3) By marriage.
(4) By naturalization.

DESCENT.

§ 3. Hungarian nationality is acquired through descent by the legitimate children of a Hungarian subject and by the illegitimate children of a woman being a Hungarian subject; in both cases even if the birth takes place abroad.

LEGITIMATION.

§ 4. Hungarian nationality is acquired through legitimation (*per subsequens matrimonium*) by illegitimate children of a Hungarian subject born of a woman being an alien.

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* Text as printed in Parliamentary Papers, Misc. No. 3 (1893), p. 4.

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MARRIAGE.

§ 5. Hungarian nationality is acquired through marriage by a woman, being an alien, who becomes married to a Hungarian subject.

NATURALIZATION.

§ 6. Hungarian nationality is acquired by an alien who has obtained from either of the authorities mentioned in § 11 a certificate of naturalization, or from His Majesty a diploma of naturalization, and who has taken the oath or solemn declaration of Hungarian nationality.

§ 7. The Hungarian nationalty which has been acquired by a naturalized male alien shall be extended to his wife and those of his children who are minors and under his paternal power (*patria potestas*).

§ 8. Certificate of naturalization for the acquisition of Hungarian nationality can only be obtained by an alien under the following conditions:

(1) Provided he is legally empowered to act of his own free will; or, if he is not so legally empowered, provided he has obtained the consent of his lawful representative.

(2) Provided he is a member of any home parish community, or if he is in process of becoming so.

(3) Provided he has been living in the interior for five years without interruption.

(4) Provided he has a blameless character.

(5) Provided he is possessed of such means, or earns sufficient, to enable him to support himself and family according to the conditions of his place of abode.

(6) Providing he has been inscribed on the list of taxpayers for five years.

In cases of naturalization of aliens by adoption according to the requirements of the Hungarian laws, the fulfilment of the conditions specified in paragraphs (3), (5), and (6), of this section is not required, provided that the person adopting such aliens has complied with the requirements contained in paragraphs (5) and (6).

§ 9. Applications for the acquisition of Hungarian nationality shall be properly furnished with the necessary documents and submitted to the head of that municipality ("Vicegespann, burgomaster"), or in the military frontier to that district office or town council within the district of which the applicant is domiciled.

§ 10. The authorities mentioned in § 9 shall examine the applications and documents; shall direct the applicant to furnish the necessary papers which might be missing; shall, if any deficiency as regards the form or contents of the papers submitted should make it necessary, make inquiries of the competent authorities, and shall then submit the papers, together with a report thereon, to the minister of the interior, or to the Croatian-Slavonian-Dalmatian Ban, or to the chief authorities of the military frontier, respectively.

§ 11. Applications for naturlaization according to §§ 8, 9, and 10 from those who are domiciled in Hungary and Fiume shall be decided by the minister of the interior; for those who are domiciled in Croatia-Slavonia, by the Croatian-Slavonian-Dalmatian Ban, and by the chief authorities of the military frontier, respectively, in favour

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of the applicant, and shall in each case give notice thereof to the minister-president for the purpose of record.

§ 12. In the certificate of naturalization it shall be clearly declared that the naturalized alien has become a Hungarian subject; and the certificate shall, in the case provided in § 7, also contain the names of the wife and children who may be affected by the naturalization.

§ 13. The authorities mentioned in § 9 shall, after receiving the certificate of naturalization, inform the applicant thereof, appointing at the same time the day on which he will have to take oath (or solemn declaration) of allegiance.

§ 14. The form of the oath (or solemn declaration) of allegiance shall be the following:

I, ——— ———, do swear (solemnly declare) before the living God that I will be faithful to His Imperial and Royal Majesty the Apostolic King of Hungary and to the constitution of the lands of the Hungarian Crown, and promise that I will faithfully fulfil my duties as a Hungarian subject.

§ 15. Minutes shall be drawn up of the oath (solemn declaration) sworn (declared), and it shall be signed by the person who has taken the oath (declaration).

The date of the oath (declaration) shall be written on the certificate of naturalization, which shall be signed by the person before whom the oath (declaration) was made, and handed over to the naturalized subject.

From this day the naturalized alien shall be deemed to be a Hungarian subject; he shall, however, except the case provided for in § 17, not be able to be a member of the legislature until ten years shall have elapsed since the date of his naturalization.

§ 16. If the alien in whose favour the certificate of naturalization was issued, and who has been summoned to swear the oath of allegiance (declaration), does not take the oath (declaration) within one year from the receipt of the summons, the certificate of naturalization becomes void, and shall be returned, together with the acknowledgment of the receipt of the summons, to the authorities which have issued the same.

§ 17. The ministry can propose to His Majesty the naturalization of such aliens as have special and extraordinary merits in regard to the lands of the Hungarian Crown, and are either residing in Hungary or declare that they intend to settle in that country.

Such persons need not necessarily comply with the conditions of the paragraphs (2), (3), and (6) of § 8.

If the alien who has been naturalized according to this clause has not yet applied to any home parish community for incorporation, he shall be deemed to belong temporarily to the community of Buda-Pesth.

The above clauses 12, 13, 14, 15, and 16 shall also apply to aliens naturalized by royal diploma.

§ 18. The naturalization does not involve the acquisition of Hungarian nobility by the naturalized alien.

§ 19. As long as their foreign nationality is not proved, all those shall be deemed to be Hungarian subjects—

(1) Who were born within the limits of the lands of the Hungarian Crown.

(2) Foundlings found in the territories of the Hungarian Crown, and brought up as such within the said territories.

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LOSS OF NATIONALITY.

§ 20. Hungary nationality is lost—
(1) By being liberated from allegiance.
(2) By decision of the authorities.
(3) By absence.
(4) By legitimation.
(5) By marriage.

LIBERATION FROM ALLEGIANCE.

§ 21. The cases of liberation shall be decided in time of peace by the minister of the interior for those who belong to Hungary and Fiume, and by the Croatian-Slavonian-Dalmatian Ban, and the chief authorities of the military frontier for those who belong to Croatia, Slavonia, and the military frontier, respectively.

If the request for liberation has been acceded to, it shall be declared in the decision that the applicant is freed from allegiance.

The minister-president shall be informed of such decisions for the purposes of record.

§ 22. Those who belong to the army and navy, or to the reserve or the supplementary reserve, can only be liberated from allegiance if they obtain a letter of dismissal from the common minister of war, or from the honvéd minister if they belong to the honvéds (national defence).

Those who do not belong to the above military bodies, but are not finally freed from military service, can only be liberated from allegiance if they have already completed their 17th year of age, and are furnished with a certificate of the municipality to which they belong, to the effect that their application has not the object of liberating themselves from military service.

§ 23. Exemptions from the provisions contained in § 22 are made in the cases of those who desire to acquire Austrian nationality, if reciprocity is accorded by that State.

Such persons can be liberated from allegiance if they furnish evidence that they fulfil all the requirements specified in paragraphs (1), (2), and (3) of § 24.

This decision, however, is to be communicated to the imperial and royal Austrian ministry.

§ 24. Liberation from the allegiance, except for the reasons provided for in § 22, can not in time of peace be refused to anybody—

(1) Provided that he is legally empowered to act of his own free will, or that his father consents to it, or that his guardian or curator, with the approval of the board of wards, accedes to his application.

(2) Provided that he is in no arrear with any State or communal taxes.

(3) Provided that there is no criminal prosecution against him in the lands of the Hungarian Crown, nor any criminal judgment against him extant and unexecuted.

§ 25. Application for liberation from allegiance in war time shall, on representation of the ministry in each case, be decided by His Majesty.

§ 26. Liberation shall be extended to the wife and, so far as the exception according to § 22 has not to take place, to those of the chil-

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dren who are minor and under paternal power, provided that the above persons emigrate together with the applicant.

§ 27. Applications for liberation from allegiance have to be accompanied with the necessary documents and to be submitted to the head of the municipality ("vicegespann, burgomaster"), and in the military frontier to that district office or town council within the territory of which the parish to which the applicant belongs is situated.

These authorities shall deal with such applications according to the provisions of § 10.

§ 28. It shall be clearly expressed in the certificate of liberation that the Hungarian subject is liberated from Hungarian allegiance, and in the case provided for in § 26 the names must be given of the wife and of those children to whom liberation is extended.

§ 29. On the day of the delivery of the certificate of liberation the Hungarian nationality is lost.

The liberation becomes void, however, if any of the impediments provided for in paragraphs (2) and (3) of clause 24 should occur before the emigration, and it becomes also void if the liberated person has not emigrated within one year from the date of the delivery of the certificate of liberation.

§ 30. The authorities mentioned in § 11 are empowered to declare the loss of nationality in regard to such persons, belonging to any parish within their jurisdiction, who have without their consent taken service under a foreign State, and have not given up such service upon their demand.

Notice of the decisions issued according to this section shall be given in each case to the minister-president for record.

ABSENCE.

§ 31. Any Hungarian subject who is residing out of the lands of the Hungarian Crown for ten years without interruption, and without a commission of the Hungarian Government, or of the common Austro-Hungarian ministers, loses Hungarian nationality.

The time of absence begins on the day on which the Hungarian subject has left the boundaries of the territories of the Hungarian Crown without having given notice to the competent authorities mentioned in § 9 of his intention to retain his nationality; and in case of having left with a passport, the absence begins with the last day of the time for which the passport was granted.

The continuity of the absence is interrupted by giving notice to the above authorities of the intention of retaining the Hungarian nationality, by procuring a new passport, by obtaining a certificate of domicile from any Austro-Hungarian consular office, or by the entry of the name of the Hungarian subject in the register of any Austro-Hungarian consular community.

§ 32. The loss in this way of Hungarian nationality shall be extended to the wife living with the Hungarian subject, and to those of his minor children who are under his paternal power.

LEGITIMATION.

§ 33. Illegitimate children lose their Hungarian nationality if legitimized according to the laws of the country to which their alien father belongs, unless the nationality of their father be not acquired

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in virtue of such legitimation, and they continue (after such legitimation) to be domiciled within the limits of the lands of the Hungarian Crown.

MARRIAGE.

§ 34. Any woman who marries an alien loses her Hungarian nationality.

§ 35. An alien woman who marries a Hungarian subject does not lose her Hungarian nationality by becoming a widow, or by being judicially separated from her husband, or by the dissolution of her marriage.

§ 36. A Hungarian subject who has assumed foreign nationality shall be deemed to be a Hungarian subject so long and until he has lost his Hungarian nationality according to the provisions of this law.

REACQUISITION OF HUNGARIAN NATIONALITY.

§ 37. Hungarian nationality is reacquired by a woman who has married a foreign subject, and whose marriage has become invalidated by the competent judicial authorities.

REPATRIATION.

§ 38. Those who have lost their Hungarian nationality and want to be repatriated, have to comply with the requirements for the acquisition of nationality, as above mentioned, provided that the following sections do not constitute exemptions therefrom.

§ 39. Any Hungarian subject who has lost his nationality by liberation or absence, and has not acquired any foreign nationality, can be repatriated even if he has not returned within the limits of the lands of the Hungarian Crown. In this case the repatriated subject will belong to the parish community of which he was formerly a member.

§ 40. Any Hungarian who has lost his nationality by liberation or absence, and returned within the limits of the lands of the Hungarian Crown, and has become a member of any inland parish community, shall be repatriated at his request.

§ 41. Any Hungarian woman who has lost her nationality by the liberation of her husband, or by her marrying an alien, if she is judicially separated from her husband, if her marriage becomes dissolved, or she becomes a widow, and if she becomes a member of any home parish community, shall be repatriated at her request.

§ 42. Any Hungarian of minor age who has lost his Hungarian nationality by the liberation or absence of his father, shall, with the approval of his guardian, be repatriated at his request, provided that his father has died, or if he has come of age according to the laws of the State of which he is a subject, and in both cases if he becomes a member of any inland parish community.

§ 43. The request for repatriation shall, in the cases provided for in §§ 38, 39, 40, 41, and 42, be submitted to those authorities mentioned in § 9 within whose jurisdiction is the parish of which the person to be repatriated is a member.

§ 44. The provision of § 15, according to which naturalized Hungarians can only after ten years become members of the legislature, does not, as a rule, apply to repatriated Hungarians unless the latter have acquired Hungarian nationality by naturalization (§ 6), and ten years have not elapsed since the acquisition of nationality.

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FINAL REGULATIONS.

§ 45. (Rules as to the form of registers of naturalization and liberations from allegiance to be kept by the authorities.)

§ 46. Naturalization and liberation from allegiance are not subject to any separate fees or dues, except the regular fees.

§ 47. Exceptions from this law are to be observed towards those States with which treaties are in force on this subject, in so far as such treaties contain provisions divergent from those of this law.

§ 48. All laws and regulations contrary to this law are hereby repealed.

All those who have been living within the limits of the lands of the Hungarian Crown, even if in different places, at least for five consecutive years until the day on which this law comes into force, and are entered on the list of taxpayers of any home parish, shall be deemed to be Hungarian subjects, unless they apply within one year from the day this law comes into force to that municipality or, in the military frontier, to that district office or town council within the jurisdiction of which their last domicile is situated, and unless they prove that they have retained their foreign nationality.

The ten years fixed in § 31 shall begin for those who left Hungary before the enforcement of this law from the day on which this law is put into force.

§ 49. The special provisions contained in this law in regard to the military frontier and its authorities have only a provisional character and are in force only until the administration of the military frontier becomes connected with Croatia-Slavonia.

§ 50. The Government, the Minister of the Interior, the Croatian-Slavonian-Dalmatian Ban, and the authorities of the military frontier, respectively, are charged with the execution of the provisions of this law.

BELGIUM.

[Enclosures in despatch from Mr. Wilson, minister to Belgium, August 4, 1906.]

CIVIL CODE.

[Translation.]

ARTICLE 9. Every person born in France[a] of a foreigner may claim French nationality within a year following the attainment of his majority provided that if he resides in France he shall declare his intention to establish his domicile there, and that if he resides in a foreign country he shall file a petition to establish his domicile in France, and shall settle there within a year after the date of filing his petition.

The declaration may be made upon the attainment of the age of eighteen years, with the father's consent; or, if there be no father, with the mother's consent; or, in the absence of both, with the authorization of the other relatives in the ascending line, or of the family, given in conformity with the conditions prescribed for marriage in chapter 1, Title V, of Book 1.

[a In applying the provisions of the Civil Code, the words "Belgium" and "Belgian" should be substituted for "France" and "French."]

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The consent of the father or mother, as well as that of the other relatives in the ascending line, shall be given either verbally at the time of the declaration or in a duly executed document.

Special mention of said consent or of the authorization of the family shall be made in the document drawn in evidence of the choice made.

ART. 10. Every child born to a Frenchman in a foreign country is a Frenchman.

Every child born in a foreign country to a Frenchman who has lost his French nationality may at any time recover by fulfilling the formalities prescribed by art. 9 [Civil Code 20].

ART. 12. A foreign woman who has married a Frenchman shall follow the status of her husband [Civil Code, 19].

ART. 17. French nationality shall be lost as follows:

1. By becoming naturalized in a foreign country; 2,[a] * * *; and 3, finally by settling in a foreign country in any way without intention of returning.

Settlements for purposes of trade shall never be considered as being made without intention of returning home.

ART. 18. A Frenchman who has lost his French nationality may always recover it on returning to France with the authorization of the Emperor, and by declaring that he desires to settle in France, and that he renounces his claim to any distinction contrary to the French law [Civil Code 20].

ART. 19. A French women who marries a foreigner shall follow the status of her husband.

Should she become a widow, she shall recover her French nationality provided she resides in France or returns thither with the consent of the Emperor, and by declaring her desire to settle there. [Civil Code 20.]

ART. 20. Persons who recover French nationality in the cases contemplated in arts. 10, 18, and 19 can not avail themselves thereof until they have fulfilled the conditions imposed by said articles, and then only as far as concerns the exercise of rights which they acquire after that time.

CONSTITUTION OF FEBRUARY 7, 1831.

[Translation.]

ART. 4. Belgian nationality is acquired, retained, and lost according to the provisions established by the civil law. [Civil Code, 7, 9, 10, 12, and 17 to 20.]

The present constitution and other laws relative to political rights determine what, besides such nationality, are the necessary requisites for the exercise of these rights.

ART. 5. Naturalization is accorded by the legislative power.

Grand ("grande") naturalization alone places a foreigner on an equality with a Belgian for the exercise of political rights.

ART. 133. Foreigners who settled in Belgium before January 1st, 1814, and who have since continued to have their domicile there, are

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[a Abrogated by law of June 21, 1865.]

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considered as Belgians by birth provided they declare their intention to avail themselves of the benefits of the present provision.

The declaration must be made within six months from the date on which the present constitution goes into force, if the persons are of age, and within the year following the attainment of their majority, if they are minors.

This declaration shall be made before the provincial authority where the person resides.

It may be made in person or by a delegate who shall bear a special and duly executed power of attorney.

LAW OF AUGUST 6, 1881, CONCERNING NATURALIZATION.

[Translation.]

ART. 1. "Ordinary" naturalization confers on a foreigner all the civil and political rights attached to Belgian nationality, with the exception of the political rights for the exercise of which the constitution or the laws require "grand" naturalization.

ART. 2. In order to obtain "grand" naturalization it is necessary: 1, to have attained the full age of 25 years; 2, to be married or to have one or more children from a marriage; 3, to have resided in Belgium for at least ten years.

This latter period shall be five years instead of ten in the case of a foreigner who has married a Belgian woman or who has one or more children from a marriage with a Belgian woman.

"Grand" naturalization shall not be granted to unmarried foreigners or childless widowers until they have attained the age of fifty years and until they have resided fifteen years in the country.

It may also be conferred, without any condition, for eminent services rendered to the nation.

Foreigners living in the Kingdom and born in Belgium, who shall have neglected to make the declaration prescribed by art. 9 of the Civil Code, may apply for "grand" naturalization without fulfilling the conditions prescribed in sections 1, 2, and 3 of the present article.

ART. 3. "Ordinary" naturalization, except in the case contemplated in art 4, shall be granted only to those who have attained their 21st year and who have resided in Belgium for five years.

ART. 4. The naturalization of the father secures to his minor children the privilege of enjoying the same advantage, provided they declare within the year of their majority, before the municipal authority of their place of domicile or residence, in conformity with Art. 8, that it is their intention to avail themselves of the benefits of the present provision.

[The declaration may be made at the age of eighteen years by the young persons above referred to, as well as by those who by virtue of any other law in force have the right to elect Belgian nationality on attaining their majority, with the consent of the father, or, failing, the father, with the consent of the mother, or failing both, with the consent of their other ascendant relatives, or of the family, given according to conditions prescribed regarding marriage in chap. 1, Title V, book 1 of the Civil Code.

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The consent of the father or the mother as well as that of the other ascendant relatives is to be given either verbally at the time of the declaration or in a duly executed document.

Special mention of this consent or of the authorization of the family shall be made in the document drawn up in evidence of the act of election.][a]

The children and the adult descendants of one who has obtained naturalization may obtain the same right without being subjected to the conditions required in articles 2 and 3 of the present law.

If the father is deceased, the naturalization of the mother secures to her children or descendants the privileges enumerated in the present article.

ART. 5. No one is permitted to become naturalized unless the application therefor is made in writing.

The application must be signed by the applicant or by one holding his power of attorney. In the latter case the power of attorney must be attached to the application.

ART. 6. Every application for naturalization, as well as every proposition by the Government having the same object, shall be referred by each house of Parliament to a committee which shall report on the application and the documents thereto annexed.

Following the report of the committee each Chamber shall decide, without discussion and in secret session, whether it is proper to take the application or proposition into consideration. If the application is given consideration the Chamber shall immediately proceed to a public discussion and vote.

ART. 7. Within eight days after the royal sanction of the vote of the Chambers granting the application the minister of justice shall deliver to the applicant a certified copy of the act of naturalization.

ART. 8. The applicant, being in possession of this copy, shall present himself before the mayor of his place of domicile or residence and shall declare that he accepts the naturalization which has been conferred upon him.

A record of this declaration shall be immediately entered in a register kept for this purpose.

ART. 9. The declaration prescribed by the preceding article shall be made, under pain of forfeiture, within two months of the date of the royal sanction.

ART. 10. Within eight days the municipal authorities shall send a duly certified copy of the act of acceptation to the minister of justice.

ART. 11. The act of naturalization shall only be inserted in the official gazette upon presentation of this copy, the date of which shall likewise be inserted.

ART. 12. The law of September 27, 1835, is abrogated with the exception of articles 14, 15, and 16.

SPECIAL PROVISION.

Every person born in Belgium of a foreigner who shall have neglected to make the declaration prescribed by art. 9 of the Civil Code before a competent authority within the year following his majority, or who shall have made a void or insufficient declaration, shall, if he has fulfilled the obligations of the military law in

[a Amendment of July 16, 1889.]

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Belgium, be entitled still to make his declaration within a period of two years from the day of the publication of the present law.

Art. 4 of the law of April 1, 1879, shall apply to him, as well as to his children and descendants.

EXTRACT FROM NOTE OF BARON DE FAVEREAU, BELGIAN MINISTER FOR FOREIGN AFFAIRS, TO MR. WILSON, MINISTER TO BELGIUM, AUGUST 2, 1906.

[Translation.]

In regard to the third question it is to be observed that the Belgian laws contain no provision relative to the *voluntary and formal* renunciation of Belgian nationality. Therefore no conditions for the recovery of said nationality when lost by renunciation can be stipulated. However, the Civil Code, in articles 18, 19, and 20, determines the ordinary conditions for the recovery of Belgian nationality.

The authorization to return to the Kingdom, provided for in articles 18 and 19, paragraph 2, is published in the "Moniteur" (Official Gazette).

To question 4 I have the honor to reply to your excellency by calling your attention to art. 17 of the Civil Code, which provides that "Belgian nationality is lost by settling in a foreign country in any manner, without intention of returning."

According to established jurisprudence the giving up of the intention to return is never presumed by the law; it must be shown by precise facts, the judgment of which is left to the magistrate.

In regard to question No. 5 the official agents of the Belgian Government abroad are instructed to lend abundant and willing aid to our compatriots in the defense of their interests.

No restriction is made in regard to Belgians definitely and permanently established abroad, protection being granted them as long as they preserve their Belgian nationality.

MINISTERIAL CIRCULAR OF MAY 15, 1900, CONCERNING THE REGISTRATION OF BELGIANS ABROAD, THE KEEPING OF THE REGISTERS, AND THE DELIVERY OF CERTIFICATES AND EXTRACTS.

[Translation.]

BRUSSELS, *May 15, 1900.*

SIR: Since 1881 the department of foreign affairs has furnished its agents abroad with registers within which to inscribe Belgians who reside within their jurisdiction. These registers, the keeping of which is of incontestable benefit, constitute in some measure a supplement to the registers of the population of the Kingdom as provided by the law of June 2, 1856.

Besides the privileges which arts. 76, 107, and 117 of the law on consulates and consular jurisdiction of December 31, 1851, connect with registration in non-Christian countries, this registration affords to Belgians who wish to comply with the formality the means of proving whether they desire to retain their nationality and that their

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residence abroad is kept up with an intention of returning. (Art. 17, No. 3, of the Civil Code.) Under many circumstances, moreover, data recorded in the register, while keeping the consuls informed as to the residence and individuality of the persons placed under their jurisdiction, facilitate and expedite consular intervention. They may be consulted to advantage, either in the issuance of passports (royal decree of June 23, 1857) and the preparation of the documents which the officials of the foreign office stationed abroad are called upon to draw up as registers of births, deaths, etc. (law of Oct. 20, 1897, arts. 1 and 2; royal decree of the 25th of same month), or as notaries public (same law, arts. 3 and 4; Govt. instructions of May 10, 1900), or else in answering the numerous requests for information addressed to the minister of foreign affairs by families and by authorities in the Kingdom. The registration of Belgians in the office of the consulate within whose jurisdiction they reside is therefore exceedingly beneficial not only for themselves but also for the Government.

Consuls shall be governed in this matter by the following instructions, which replace those of August 1, 1881: Belgians living abroad may, after proving their nationality, be registered in the office of the consular post where they reside.

The registration consists in the inscription of the Belgian in a special register, indicating the date of inscription, the Christian and family name of the applicant, his occupation, the place and date of his birth, his civil status (bachelor, married, widower, or divorced), Christian and family name of his father and mother, the place of his last domicile in Belgium or that of his parents, the date of his arrival and his place of residence in the consular district, his previous place of residence, the documents which he has produced in proof of his nationality, the type of his signature, and the Christian and family names and the places and dates of birth of his wife and children, if he has such.

The registration of a Belgian in the registry shall be free of charge. The delivery and the viséing of certificates of registration are alone subject to the fees established under Nos. 29 and 30 of the schedule appended to the law of October 22, 1897, namely: No. 29, for the delivery of a certificate of registration, 4 francs; No. 30, for the viséing of a certificate of registration, 3 francs.

It is necessary that the certificates of registration, reciting all the information contained in the registry, be signed by the agent who delivers them, and stamped with the seal of the consulate. The blank form, which you will find further on, may be followed in drawing up these certificates.[a]

[a] *Blank form.*

SPECIAL DECLARATION.

Date of inscription.	Full name.	Occupation	Place of birth.	Date of birth.	Bachelor, married, or widower.		Last place of residence in Belgium.	Date of arrival and place of residence in consular district.	Last previous residence.	Remarks.
					Full name of parents.	Full name of parents.				

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Where the Belgian residents are numerous the register shall be provided with an alphabetical index in order to facilitate consultation. Finally, at the beginning of January of each year the officials of the foreign office abroad shall transmit to the ministry of foreign affairs a copy of the inscriptions made in the register during the preceding year.

It is not to be expected that the carrying out of the foregoing instructions will be accompanied with any difficulties; they are formal and do not really need any comment. Nevertheless, I will give a few explanations in order clearly to set forth the intentions of the Government.

As you will have observed, Belgians can not be inscribed in the registry until they have proven their nationality.

As a rule, Belgian nationality should be proven, as far as possible, by means of authentic documents, such as certified copies of declarations of choice of nationality, naturalization certificates, birth and marriage certificates, passports, certificates of discharge from military service, etc. You will please observe, however, that the performance of the military obligations does not necessarily involve Belgian nationality, which can only be acquired according to the rules established by law.

If the interested parties do not possess corroborative documents, you will take such precautions as prudence and the circumstances suggest in order to establish their identity and their Belgian nationality. I can but reiterate to you in this connection the recommendations already made in the circular of Viscount Vilain XIV of June 24, 1857, regarding the issuance of passports.

Whenever any doubt remains in your mind regarding the identity of the applicant, it will be well to require him to make a declaration, preferably in the office and in the presence of two witnesses, and containing all the data to be entered in the register. Should you deem it necessary you might, besides, refer the matter to my department, which will make the necessary inquiries of the competent authorities in the Kingdom.

Another point to which I wish to call your earnest attention is the purely optional character of the measure of which I have just spoken to you. Although it is expedient that you invite the Belgians residing within your consular jurisdiction to register voluntarily, and that you neglect no opportunity to impress upon them the utility of this formality, nevertheless you must not in any case, in spite of the practical advantages offered by registration, consider yourself authorized to make it obligatory or to refuse your assistance to those of our countrymen who have not registered.

In some countries the local authorities require foreigners residing within their territories to furnish proof of their nationality. When, in such cases, Belgians call at the consulate in order to declare there that they possess and wish to retain Belgian nationality, you must not record their declaration in the special registers for the declaration of nationality, the keeping of which forms the subject of the second part of the present document, but you should inscribe the declarants in the register of the consulate, keeping in mind the rules which I have just laid down. As a general rule the exhibition of an extract

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from the last-named register will be sufficient for them in order to furnish to the local authorities the proof which the latter require.

* * * * * * *

As it is desirable that the utility of registration be known to all parties concerned, you will please post up on the doors of your office the notice which my department places at your disposal for this purpose. This notice invites Belgians residing abroad to register at the consulate within whose jurisdiction they reside. It also calls attention to the fact that consuls are authorized to grant a total or partial remission of the fees established for the delivery or viséing of the certificates of registration. Whenever any person not situated in easy circumstances asks such a favor of you, I can only state that I shall be obliged to you to comply with his request.

Please accept, etc.,

(Signed) P. DE FAVEREAU.

BOLIVIA.

[Enclosure in despatch from Mr. Sorsby, minister to Bolivia, October 4, 1906.]

The minister of foreign affairs to Mr. Sorsby, August 31, 1906.

[Translation.]

No. 18.] MINISTRY OF FOREIGN AFFAIRS,
La Paz, August 31, 1906.

Mr. MINISTER: In reply to your estimable dispatch of the 22nd instant, in which you request this ministry to furnish you with the laws in force with respect to citizenship, expatriation, and protection of Bolivian citizens abroad, I have to say that the articles of the political constitution in force, promulgated October 28, 1880, and which govern the matter, are as follows:

ARTICLE 31. The following are Bolivians by birth:

1st. Those born within the territory of the Republic.

2nd. Those born abroad of a Bolivian father or mother in the service of the Republic, or who have emigrated for political causes; these are Bolivians even in those cases in which the law imposes the condition of having been born in Bolivian territory.

ARTICLE 32. The following are also Bolivians:

1st. Children born abroad of a Bolivian father or mother, by the mere fact of settling in Bolivia.

2nd. Foreigners who, having resided one year in the Republic, declare their desire to settle in Bolivia before the authorities of the municipality in which they reside.

3rd. Foreigners who obtain naturalization papers from the Chamber of Deputies as a privilege.

ARTICLE 33. In order to be a citizen it is necessary:

1st. To be a Bolivian; 2nd. To be 21 years of age if single, or 18 if married; 3. To be able to read and write and to be possessed of real estate, or an annual income of two hundred bolivianos not derived from services as a domestic servant; and 4th. To be inscribed in the civil register.

ARTICLE 34. The rights of citizenship consist:

1. In participation, as elector or elected, in the formation or exercise of the public powers.

2. In being eligible to public offices without any other requisite than fitness, save the exceptions established by this constitution.

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ARTICLE 35. The rights of citizenship are lost: 1st. By becoming naturalized in a foreign country; 2nd. By being sentenced by a competent tribunal to corporal punishment until rehabilitation; 3rd. By making a declaration of fraudulent bankruptcy; and 4th. By accepting employment, office, or decorations from a foreign Government without special permission of the Senate.

ARTICLE 36. The rights of citizenship are suspended for being *sub judice* by virtue of a decree of impeachment, or for having been distrained as a debtor to the public treasury after the expiration of the period fixed for payment.

With the hope of having complied with your request, I take pleasure in renewing the assurances of my high and distinguished consideration.

CLAUDIO PINILLA.

To His Excellency Mr. WILLIAM B. SORSBY,
Envoy Extraordinary and Minister
Plenipotentiary of the United States.

BRAZIL.

[Enclosure in despatch from Mr. Griscom, ambassador to Brazil, October 13, 1906.]

The minister for foreign affairs to Mr. Griscom, October 8, 1906.

[Translation.]

Second section.] MINISTRY FOR FOREIGN AFFAIRS,
Rio de Janeiro, October 8, 1906.

MR. AMBASSADOR: I have before me note No. 23 which your excellency sent me on August 11 requesting explanations about the laws which regulate the rights of Brazilian citizenship and the way we protect our citizens residing in foreign countries.

To the first question formulated in the said note it is my duty to answer that the rights of citizenship are those stated in articles 72 to 78 of the Federal constitution.

As to the second question, decree No. 569 of June 7, 1899, says:

ART. 1. The rights of Brazilian citizenship are lost to those:

SEC. 1. Who become naturalized in a foreign country. (Constitution, art. 71, sec. 2, letter A.)

SEC. 2. Who accept any employment or pension from a foreign government without permission of the Federal executive. (Constitution, art. 71, sec. 2, letter B.)

* * * * * * *

ART. 5. Lose all political rights:

SEC. 1. Brazilians who allege reasons of religious faith in order to dispense with whatever duty the laws of the Republic may by chance impose on its citizens. (Constitution, art. 72, sec. 29.)

SEC. 2. Brazilians who accept foreign decorations or titles of nobility. (Constitution, art. 72, sec. 29.)

To the third question, your excellency will find the answer in the said articles 2 and 5, and in addition in numbers 3, 4, and 7 of the above-mentioned decree, which I transcribe below:

ART. 3. The national who has lost his citizenship reacquires the rights of Brazilian citizenship when he obtains his reintegration by decree (of the executive), provided he is domiciled in Brazil.

SEC. 1. In order to accomplish this the petitioner will address a petition to the President of the Republic, through the minister of the interior or of the governor or president of the State in which he resides. His signature must be duly

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certified and the chief district attorney (procurador geral) of the Republic may give his opinion thereon.

SEC. 2. The Brazilian who thus reacquires his nationality will enjoy from that time on all the rights which exclusively belong to Brazilian citizens.

ART. 4. The minor children of the national thus reintegrated in his rights are in the same condition as their father, if the law of the country to which they belonged permits the collective result of loss of citizenship.

ART. 7. Reacquire political rights:

SEC. 1. Brazilians who, having lost their citizenship, should affirm, by a signed statement with two witnesses, before the minister of the interior, governor, or president of the State in which they reside, to be ready to undergo the burdens (duties) imposed on citizens by the laws of the Republic, and from which they were already freed.

SEC. 2. Brazilians who have lost their citizenship and who by a like affidavit affirm that they have given up the decoration or title which they had accepted. The communication of the fact must be transmitted to the respective Government by the regular diplomatic channels.

SEC. 3. In either case the Executive, to whom a copy of the affidavit signed before the governor or president of the State shall be transmitted, will issue the decrees confirming the said declarations.

In regard to the fourth question I must tell your excellency that residence in foreign countries does not affect the rights of a native citizen.

And as to the last, the Brazilian Government protects its citizens in conformity with the principles established by international law.

I have the honor to reiterate to your excellency the assurances of my high consideration.

RIO BRANCO.

CONSTITUTION.

[Translation.]

TITLE IV.—*Brazilian citizens.*

SECTION I.—*Qualifications of Brazilian citizens.*

ART. 69. The following are Brazilian citizens:

1. Persons born in Brazil, even though of a foreign father, provided he is not here in the employ of his government.

2. Children of a Brazilian father, and illegitimate children of a Brazilian mother, who are born abroad, provided they establish their domicile in the Republic.

3. Children of a Brazilian father residing in another country in the service of the Republic, even though they do not take up their residence here.

4. All foreigners in Brazil on November 15, 1889, who do not declare their intention to retain their original nationality within six months after the constitution goes into force.

5. Foreigners who own real estate in Brazil, and are married to Brazilian women, or have Brazilian children, provided they reside in Brazil, unless they declare their intention not to change their nationality.

6. All foreigners otherwise naturalized.

ART. 70. All citizens 21 years of age who register in the manner prescribed by law are voters.

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SEC. 1. The following persons can not register for either Federal or State elections:

1. Beggars.
2. Illiterates.
3. Enlisted soldiers, except the pupils of military schools for higher instruction.
4. Members of monastic orders, societies, congregations, or communities of whatsoever denomination, who are subject to a vow of obedience, or to a rule or by-law which implies the surrender of individual liberty.

SEC. 2. Citizens who are not allowed to register are not eligible to office.

ART. 71. The rights of a Brazilian citizen shall only be suspended or lost in the following cases:

SEC. 1. They shall be suspended—

(*a*) For physical or moral incapacity;
(*b*) As a result of criminal condemnation, while the sentence lasts.

SEC. 2. They are lost—

(*a*) By becoming naturalized in a foreign country;
(*b*) By accepting employment or pension from a foreign government without the permission of the federal executive.

SEC. 3. The conditions under which the right of Brazilian citizenship may be recovered shall be determined by a federal statute.

CHILE.

CONSTITUTION (1833).

[Translation.]

ART. 5 (6). The following are Chileans:

1. Those born in the territory of Chile.
2. The children of a Chilean father or mother, born in foreign territory, by the mere fact of their settling in Chile. The children of Chileans, born in foreign territory, if the father is actually in the service of Chile, are Chileans even for the purposes of the fundamental laws or any other laws which require birth in Chilean territory.
3. Foreigners who, having resided in the Republic one year, declare their desire to settle in Chile before the municipality of the Territory in which they reside, and apply for naturalization papers.
4. Those who have been naturalized as a special favor by the Congress.

ART. 6 (7). It shall be the duty of the municipality of the department in which persons not born in Chile reside to declare whether or not they are entitled to become naturalized in accordance with section 3 of the foregoing article. When the declaration made by the proper municipality is favorable, the President of the Republic shall issue the naturalization papers.

ART. 7 (8). Chileans who have reached the age of twenty-one years, who can read and write, and who are inscribed in the register of voters of their department, are active citizens entitled to vote.

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The said registers shall be public and shall continue for the time determined by law.

The inscriptions shall be continuous and shall only be suspended for the period fixed by the law on elections.

ART. 8 (10). Active citizenship, including the right to vote, shall be suspended for the following causes:

1. Physical or moral disability which prevents free and deliberate action.
2. Being employed as a domestic servant.
3. Prosecution for a crime involving corporal or infamous punishment.

ART. 9 (11). Citizenship is lost for the following causes:

1. Condemnation to corporal or infamous punishment.
2. Fraudulent bankruptcy.
3. Naturalization in a foreign country.
4. Acceptance of employment, office, or pension from a foreign government without special permission from Congress.

Persons who have lost their citizenship for any of the causes mentioned in this article may request rehabilitation from the Senate.

CHINA.

[Enclosure in despatch from Mr. Coolidge, chargé d'affaires, No. 451, November 16, 1906.]

Ministers of the Wai Wu Pu to Mr. Coolidge, November 15, 1906.

[Translation.]

PEKING, *November 15, 1906.*

YOUR EXCELLENCY: On August 16 we received a note from His Excellency Mr. Rockhill, saying that he had been instructed by circular from his Government to request certain information touching the laws of citizenship in China, particularly respecting six items which were mentioned.

This Board at once communicated with Commissioners on Revision of the Code, asking them to investigate and report. We are now in receipt of their reply, saying that the Code of China as yet contains no provisions touching the question of citizenship, but that they were now engaged in an examination of the codes of various countries with a view to the revision of the laws of China, and that after the revision should be completed and promulgated they would inform us so that we might be enabled to communicate to your excellency the facts desired.

It becomes our duty, therefore, to send this reply for your excellency's information, and in doing so, we avail, etc.

PRINCE OF CH'ING.
NA-T'UNG.
CH'Ü HUNG-CHI.
LIEN-FANG.
TONG SHAO-I.

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COLOMBIA.

CONSTITUTION (1886).

[Translation.]

TITLE II.—*The inhabitants: Citizens and foreigners.*

ARTICLE 8.

The following are Colombian citizens:

1. By birth:

Natives of Colombia, under one of two conditions, viz, that the father or mother shall also have been a native, or, in the case of children of foreigners, that they shall be domiciled in the Republic.

The legitimate children of a Colombian father and mother, who are born in a foreign land and afterwards become domiciled in the Republic, shall be considered as Colombians by birth for the purposes of laws which require this qualification.

2. By origin and residence:

Those who, being the children of a mother or father who are natives of Colombia, were born abroad and become domiciled in the Republic; and any Spanish Americans who ask to be registered as Colombians before the municipal authorities of the place where they settle.

3. By adoption:

Foreigners who request and obtain naturalization papers.

ARTICLE 9.

The status of a Colombian citizen is lost by acquiring naturalization papers in a foreign country and establishing domicile therein, and it may be recovered in accordance with the laws.

ARTICLE 10.

It is the duty of all citizens and foreigners in Colombia to live in submission to the constitution and the laws, and to respect and obey the authorities.

ARTICLE 11.

Foreigners shall enjoy the same rights in Colombia as are granted to Colombians by the laws of the nation to which the foreigner belongs, save the stipulations of public treaties.

ARTICLE 12.

The law shall define the status of domiciled foreigners, and the special rights and obligations of those possessing this status.

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ARTICLE 13.

A Colombian who is caught bearing arms in a war against Colombia shall be tried and punished as a traitor even though he has lost his citizenship.

Foreigners naturalized and domiciled in Colombia shall not be obliged to bear arms against the country of their origin.

ARTICLE 14.

Companies or corporations which are recognized in Colombia as artificial persons shall not have any other rights than those belonging to Colombian persons.

ARTICLE 15.

All male Colombians twenty-one years of age who practice some profession, art, or trade, or have some lawful occupation or other legitimate or known means of support, are citizens.

ARTICLE 16.

Citizenship is lost ipso facto when nationality is lost.

Citizens also lose their status as such in the following cases, judicially declared:

1. When they have entered the service of a nation at enmity with Colombia.
2. When they have belonged to a faction which has risen against the government of a friendly nation.
3. When they have been condemned to suffer corporal punishment.
4. When they have been removed from public office by a criminal judgment or one involving liability.
5. When they have committed acts of violence, falsehood, or corruption in elections.

Those who have lost their citizenship may ask rehabilitation of the Senate.

ARTICLE 17.

The exercise of the rights of citizenship is suspended for the following causes:

1. Well-known mental alienation.
2. Judicial interdiction.
3. Habitual drunkenness.
4. Criminal prosecution, as soon as the judge issues a warrant of arrest.

ARTICLE 18.

The status of a citizen entitled to exercise all rights as such is an essential prerequisite to the exercise of the rights of suffrage and to the right to hold public offices which confer authority or jurisdiction.

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COSTA RICA.

CONSTITUTION (1871).

[Translation.]

TITLE II.

SECTION FIRST.—*Costa Ricans.*

ART. 4. Costa Ricans are either native or naturalized.

ART. 5. Native Costa Ricans are:

1. All persons born in the territory of the Republic, except those who, being the issue of a foreign father or mother, should, under the law, be clothed with foreign nationality of the latter.

2. The children of a Costa Rican father or mother, born outside the territory of the Republic, whose names have been inscribed in the civil register, by their parents during their minority, or by themselves after reaching full age.

3. The children of a foreign father or mother born in the territory of the Republic who, after having reached the age of twenty-one years, register themselves as Costa Ricans, or were registered as such by their parents before reaching that age.

4. The inhabitants of the Province of Guanacaste who settled within its limits between the date of its annexation to this Republic and the date of the treaty concluded with Nicaragua (April 15, 1858) shall be native citizens.

ART. 6. Naturalized Costa Ricans are:

1. Those who have acquired that quality by virtue of laws heretofore enacted.

2. Foreign women married to Costa Ricans.

3. Persons born in other countries who, after having resided one year in the Republic, obtain naturalization papers.

ART. 7. Costa Rican citizenship is lost and recovered for the causes and by the means established by law.

ART. 8. Costa Ricans are bound to observe the constitution and the laws, serve their country, defend it, and contribute to the public expenses.

SECTION SECOND.—*Citizens.*

ART. 9. Costa Rican citizens are all native or naturalized Costa Ricans who have reached twenty years of age, or eighteen years if they are married or are professors of some science; provided in all cases that they own some property, or have an honest trade, the fruits or income of which are sufficient to support them in proportion to their condition of life.

ART. 10. The rights of citizenship are suspended, lost, and recovered for the causes established by law.

ART. 11. Those who having lost their citizenship, except through treason to their country, may be rehabilitated, if sufficient legal grounds are set forth in the application for the favor.

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SECTION THIRD.—*Foreigners.*

ART. 12. Foreigners enjoy in the territory of the Nation the same civil rights as citizens; they can exercise their industries or commerce, hold real property, purchase and sell it, navigate the rivers and coasts, freely exercise their religion, dispose of their property by last will and testament, and contract marriage according to law. They are not bound to become citizens, nor to pay forced extraordinary taxes.*

[Translation.]

LAW ON FOREIGNERS AND NATURALIZATION (OF DECEMBER 21, 1886, PREPARED BY THE PERMANENT COMMITTEE AND APPROVED BY CONGRESS IN THE DECREE OF MAY 13, 1889, EXCEPT ARTICLE 15, WHICH WAS OMITTED).

ARTICLE 1. The following are native Costa Ricans:

(1) The legitimate child of a Costa Rican father, whatever be the place of its birth.

(2) The illegitimate child of a Costa Rican mother, whatever be the place of its birth.

(3) The illigitimate child of a foreign mother, recognized by a Costa Rican father.

(4) A child born or found within the territory of the Republic, its parents or nationality being unknown.

(5) The inhabitants of the province of Guanacaste who were permanently settled there from its incorporation into this Republic (December 9, 1825) up to the treaty of April 15, 1858, concluded with Nicaragua.

(6) The children of a foreign father who were born within the national territory, and who, after attaining twenty-one years of age, inscribe themselves of their own accord in the civil registry, or who are inscribed before attaining this age at the instance of their father (or, if there be none, of their mother).

ARTICLE 2. Children under 21 years of age, of a Costa Rican father, who have lost their nationality, may, on attaining their majority, claim Costa Rican citizenship by making a declaration to this effect before the diplomatic or consular officers of the Republic, if they reside abroad, or before the department of foreign relations if they reside within the national territory.

The same shall apply to natural children of a Costa Rican mother who has lost her nationality and who have not been recognized by a foreign father.

ARTICLE 3. The following are naturalized Costa Ricans:

(1) Foreigners who acquire or have acquired Costa Rican citizenship according to the law.

(2) Costa Ricans who, having lost their nationality, recover it.

(3) A foreign woman who marries a Costa Rican, she preserving this nationality even after becoming a widow.

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*Text as printed in American Constitutions by Rodriguez (1905), I, 326.

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ARTICLE 4. The following lose their Costa Rican nationality:

(1) Costa Ricans who become naturalized in a foreign country.

(2) Those who accept public offices, titles, or decorations conferred by a foreign government, without the consent of their own government, with the exception of literary, scientific, or humanitarian titles, which may be freely accepted.

(3) Those who, without the permission of the government, perform military service in a foreign nation or enlist in a foreign military organization.

(4) The illegitimate minor son of a Costa Rican mother on being recognized by his foreign father with the consent of the mother.

(5) A Costa Rican woman who marries a foreigner, her nationality remaining lost even in widowhood, unless she fails to acquire the nationality of her husband according to the laws of the latter's country, in which case she preserves her own nationality.

ARTICLE 5. A Costa Rican who has lost his nationality may recover it:

(1) If his case is that described under (1) of the foregoing article, by returning to the territory of the Republic if he is abroad, and declaring before the department of foreign relations that he desires to settle in Costa Rica and that he renounces his foreign citizenship.

(2) If his case is that of (2), by expressly declaring before the office of foreign relations that he has given up the office, title, or decoration which was conferred on him by the foreign government.

(3) If he comes under case (3) of the same article, by soliciting the consent of the government to return to the territory of the Republic, and, if the government grants this, by returning to Costa Rica in order to fulfill the conditions imposed on foreigners desiring to become naturalized.

(4) If his case be that indicated under (4), by declaring, on attaining his majority, before the office of foreign relations that he chooses Costa Rican citizenship, or by his father inscribing him in the civil register before this age.

(5) In case (5) the widow, on the marriage being dissolved, may return to the territory of the Republic and declare before the office of foreign relations that she desires to settle in the Republic, and that she renounces her foreign nationality.

ARTICLE 6. A change of nationality on the part of the husband during marriage involves a change of nationality of the wife, if, according to the laws of the country in which the husband has acquired citizenship, the wife follows the husband's status.

ARTICLE 7. The rule that a child *in utero matris* is considered as being born for all intents and purposes favorable to it may be invoked by a person desirous of acquiring or preserving Costa Rican citizenship.

ARTICLE 8. Any foreigner may become naturalized in Costa Rica who proves—

(1) That he is of age according to the laws of his country;

(2) That he has a profession, trade, or income from which to live;

(3) That he has resided at least a year in the Republic and that he has observed good conduct.

ARTICLE 9. Citizenship papers will not be granted to the citizens or subjects of a nation with which the Republic is at war, nor to those declared judicially in other countries to be pirates, slave traders, in-

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cendiaries, or counterfeiters of coin or paper money or other documents of public credit, nor to assassins, kidnappers, or robbers.

Citizenship acquired fraudulently by a foreigner in violation of the law is *ipse jure* null and void.

ARTICLE 10. A foreigner desiring to become naturalized shall apply in person or through a person specially empowered to the office of foreign relations stating his intention to become a Costa Rican citizen and renounce his nationality.

This application shall be remitted to the governor of the Province or district where the foreigner has resided, in order that he may examine three or more witnesses regarding the points enumerated in article 8.

When the depositions have been taken and returned to the office of foreign relations, the Government shall, provided the inquiry has been favorable to the applicant and there is no legal hindrance, grant the naturalization papers. In the contrary event it shall refuse them. Whatever decision is reached, it shall be published in the official gazette.

The provisions of this article do not apply to foreigners who are naturalized by virtue of the law. Neither do they apply to those who have the right to claim or choose Costa Rican citizenship, for whom a simple declaration made before the diplomatic or consular officers of the Republic abroad or before the office of foreign relations will suffice.

ARTICLE 11. The naturalization of a foreigner becomes null and void by a residence in his native country during two consecutive years, unless such residence is rendered necessary in order to perform some official mission for the Government of Costa Rica, or unless it be by permission of the latter.

ARTICLE 12. A change of nationality is not retroactive in effect.

ARTICLE 13. Naturalized citizens have the same rights as natives to the protection of the Government of the Republic. However, if they return to their native country they remain subject to any liabilities which they may have incurred before their naturalization.

They have the same rights and obligations as native citizens, but they shall be disabled from discharging those offices and employments for which nationality by birth is required according to law.

ARTICLE 14. Foreigners enjoy the rights specified in article 12 of the Constitution, as well as others which are indicated in treaties with foreign nations.

ARTICLE 15. (Abolished by law of May 13, 1889.)

ARTICLE 16. Foreigners are under obligation to contribute toward public expenses in the manner prescribed by the laws, and to obey and respect the institutions, laws, and authorities of the country, submitting to the sentences and judgments of the courts without being entitled to any other recourse than that granted by the laws to citizens. Appeal may be made through diplomatic channels only in case of a denial of justice or a willful delay in its administration, after all remedies provided by the laws have been exhausted in vain, in the manner prescribed by international law.

ARTICLE 17. Foreigners do not enjoy the political rights belonging to citizens; consequently they can neither vote, nor be voted for, for any office subject to popular election; nor can they be appointed to any other office or commission conferring civil or political authority

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or jurisdiction; nor combine for the purpose of attempting to interfere actively in the militant policy of the Republic; nor take any part therein; nor exercise the right of petition in this kind of matters.

ARTICLE 18. Foreigners are exempt from military service. However, those here domiciled are liable to police service when it is a question of maintaining the safety of property and the preservation of order in the same town in which they reside.

ARTICLE 19. As far as citizenship, the status of foreigners, naturalization, and the rights and obligations of foreigners are concerned, the stipulations of international treaties remain unaffected.[a]

CUBA.

[Enclosure 1, in despatch from Mr. Sleeper, chargé d'affaires, No. 148, August 7, 1906.—Translation.]

Doctor O'Farrill to Mr. Sleeper, August 3, 1906.

No. 625.] DEPARTMENT OF STATE AND JUSTICE,
DEPARTMENT OF STATE,
Habana, August 3, 1906.

MR. CHARGÉ D'AFFAIRES:

In reference and reply to your honor's polite communication, No. 56, of the 18th ultimo, I take pleasure in advising you, as requested, on the following points, to wit:

1. Laws relating to Cuban citizenship.

The existing law governing this matter is comprised in the following provisions, laws, and decrees:

(A) Articles 4, 5, 6, 7, and 8 and the second article of the transitory rules of the constitution of the Republic.

(B) Articles 18 to 24, inclusive, of the civil code, in so far as they are not modified by the above-cited articles of the constitution and can be applied in harmony with the political conditions existing in Cuba since the cessation of Spanish rule.

(C) Law of October 30, 1902, published in the Official Gazette of November 7, 1902.

(D) Law of November 21, 1902, published in the Official Gazette of November 27, 1902.

(E) Presidential decree No. 183, of December 15, 1902, published in the Official Gazette December 16, 1902, amended by Presidential decree No. 174, of April 21, 1905, published in the Official Gazette of April 26, 1905.

(F) Two laws of June 13, 1903, published in the Official Gazette of the same date.

2. Means by which Cuban citizenship is lost.

This question is covered by article 7 of the constitution of the Republic above cited.

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[a] Leyes usuales vigentes (edicion ordenada por el Señor Ministro de Gobernacion, Lic. don José Astúa Aguilar, San José, 1905), p. 5. Enclosure in despatch from Mr. Bailey, chargé d'affaires, San José, July 29, 1906.

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3. Whether or not the laws of Cuba authorize the renunciation of citizenship; and if so, the conditions for the reacquisition of the citizenship thus renounced.

While no law exists that expressly authorizes the renunciation of Cuban citizenship, article 7 of the constitution and also clause 1 of article 1 of the law cited under date of October 30, 1902, authorize such renunciation by implication.

The requisites necessary for reacquiring Cuban citizenship are set forth in the articles of the Civil Code above mentioned.

4. Whether, and how far, residence in foreign parts may affect the citizenship of origin.

According to the provisions of article 7 of the constitution, mere residence in a foreign country does not affect citizenship of origin, but according to number 4 of the same article it does affect citizenship acquired through naturalization.

5. And, finally, the practice of the Cuban government in protecting its citizens permanently residing in other countries.

The protection of our citizens in foreign countries, as is the custom of other governments, is intrusted to our diplomatic and consular agents, who, acting under the instruction of this department, are charged to see that they enjoy the privileges accorded to foreigners by the laws of the country in which they reside, and those assured by treaty between Cuba and the different governments, with reference to freedom of residence, right to travel or change of domicile, the exercise of religious worship, the disposal of their property and effects, and the engaging in commercial, professional, or industrial pursuits; provided, however, that such protection does not extend to the defense of individuals accused before any court of justice, nor to their interests when the subject of judicial contention; this with the understanding that in the event such privileges are not afforded our citizens, or are denied them, or the free exercise of their liberty is restrained, said agents shall file the necessary protests.

Herewith inclosed I have the honor to transmit to your honor one copy each of the Gazette, dated the 7th and 27th of November, 1902, and the 16th of December, the same year, previously mentioned, and also a copy of Presidential Decree No. 174, of April 21, 1905, and of the two laws of June 13, 1903, also above referred to.

I reiterate to your honor assurance of my highest and most distinguished consideration.

JUAN F. O'FARRILL, *Secretary.*

[Enclosure 2 in despatch No. 148.—Translation.]

CONSTITUTION.

TITLE II.

ARTICLE 4. Cuban citizens are native born and naturalized.

ARTICLE 5. Native born Cubans are:

First. Those born of Cuban parents within or without the territory of the Republic.

Second. Those born within the territory of the Republic of foreign parents, provided that on becoming of age they claim the right of inscription as Cubans in the proper register.

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Third. Those born in foreign countries of native-born parents who have forfeited their Cuban nationality, provided that on becoming of age they claim their inscription as Cubans in the same register.

ARTICLE 6. Naturalized Cubans are:

First. Foreigners who, having served in the liberating army, may claim Cuban nationality within six months following the promulgation of this constitution.

Second. Foreigners established in Cuba prior to January 1st, 1899, who may have retained their residence after said date, provided they claim Cuban nationality within the six months next following the promulgation of this constitution, or, if minors, within a like period after they shall have obtained their majority.

Third. Foreigners who, after five years' residence in the territory of the Republic, and not less than two years from the time that they declared their intention of acquiring Cuban citizenship, may obtain their letters of naturalization in conformity with the laws.

Fourth. Spaniards residing in the territory of Cuba on the 11th day of April, 1899, who may not have been registered as such in the proper registers prior to the same month and day of 1900.

Fifth. Africans who may have been slaves in Cuba, and those who were emancipated and comprised in article 13 of the treaty of June 28th, 1835, entered into by Spain and England.

ARTICLE 7. Cuban citizenship is forfeited:

First. By acquiring foreign citizenship.

Second. By accepting employment or honors from another Government without permission of the Senate.

Third. By entering the military service of a foreign nation without a like permission.

Fourth. By a naturalized Cuban residing five years continuously in his native country, except by reason of his being in the employ of or fulfilling a commission of the Government of the Republic.

ARTICLE 8. Cuban citizenship may be reacquired as may be provided for by law.

TRANSITORY RULES.

Second. Persons born in Cuba, or children of native-born Cubans, who at the time of the promulgation of this constitution might be citizens of any foreign nation shall not enjoy the rights of Cuban nationality without first and expressly renouncing their said foreign citizenship.

[Enclosure 4 in despatch No. 148.—Translation.]

CIVIL CODE.

ARTICLE 18. Children while they remain under the parental authority have the nationality of their parents.

In order that those born of foreign parents in Spanish territory may enjoy the benefits granted them by No. 1 of article 17, it shall be an indispensable requisite that the parents declare, in the manner and before the officials specified in article 19, that they choose in the name of their children the Spanish nationality, renouncing all others.

ARTICLE 19. The children of a foreigner born in Spanish possessions must state, within the year following their majority or emancipation, whether they desire to enjoy the citizenship of Spaniards granted them by article 17.

Those who are in the Kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside abroad, before one of the consular or diplomatic agents of the Spanish Government, and those who are in a country in which the Government has no agent, addressing the secretary of state of Spain.

ARTICLE 20. The citizenship of a Spaniard is lost by acquiring the nationality of a foreign country, or by accepting employment from another government, or by entering the armed service of a foreign power without the permission of the King.

ARTICLE 21. A Spaniard who loses his citizenship by acquiring the nationality of a foreign country can recover it upon returning to the Kingdom by declaring

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to the official in charge of the civil registry of the domicile which he elects that such is his wish, in order that the proper entry may be made, and by renouncing the protection of the flag of said country.

ARTICLE 22. A married woman follows the condition and nationality of her husband.

A Spanish woman who marries a foreigner may, upon the dissolution of the marriage, recover the Spanish nationality by complying with the requisites mentioned in the preceding article.

ARTICLE 23. Any Spaniard who loses his citizenship by accepting employment from any other government, or by entering the armed service of a foreign power without the King's permission, can not recover the Spanish nationality without previously obtaining the royal authorization.

ARTICLE 24. A person born abroad of a Spanish father and mother, who may have lost the Spanish nationality on account of the parents having lost it, may also recover it by complying with the conditions required by article 19.

[Enclosure in despatch from Mr. Squiers, minister to Cuba, No. 291, November 18, 1902.—Translation.]

LAW OF OCTOBER 30, 1902.

DEPARTMENT OF STATE AND JUSTICE.

Be it by these presents known, That the Congress has enacted, and I, Tomás Estrada Palma, constitutional President of the Republic of Cuba, have sanctioned the following law:

ARTICLE 1. The acts by virtue of which Cuban nationality is acquired, lost, or recovered shall be made to appear by means of a record in the section of citizenship of the registry of civil status.

The persons included in the cases referred to in sections 2 and 8 of article 5 of the constitution and the second of the transitory provisions of the same, and residing abroad, shall exercise the right conferred upon them by the former sections before the diplomatic or consular agent of Cuba nearest to their place of residence.

ARTICLE 2. The inscriptions to which the preceding article refers shall be made with the following formalities and requirements:

1. The date and place where they are drawn.
2. The names and surnames of the officials authenticating the same.
3. The names, surnames, and filiation of the parties and the witnesses participating in the act.

The witnesses referred to in the preceding paragraphs shall be two, having legal capacity, and shall make a declaration setting forth the truth of the circumstances which should be expressed in the inscription.

ARTICLE 3. The interested parties shall present to the custodian of the registry their certificates of baptism or the certificate of birth, as the case may be, as well as the record or certificate of marriage, should they be married, together with the certificates of birth of the wife and of the children.

Should it be impossible to present the documents referred to in the preceding paragraph, they shall indicate the archives where they may be found, and their approximate date.

In the cases where the birth of the interested parties, their wives or their children, shall have been inscribed in the registry of civil status of this island, or in the register in charge of the diplomatic or consular agent, the acquisition, loss, or recovery of Cuban citizenship shall be made by a marginal note on the record of birth, for which purpose the custodian of the register wherein the said acquisition, loss, or recovery occurs shall remit, within the term of fifteen days counting from that on which the inscription took place, a certificate of the same to the custodian of the register wherein the said birth appears.

For failure to comply with the provisions of the preceding paragraph a fine of from ten to twenty-five dollars American currency shall be imposed on the custodian of the register required to remit the certificate.

ARTICLE 4. In the inscriptions mentioned in this law the following circumstances shall be expressed if it is possible:

1. The former domicile of the interested parties.
2. The names, surnames, place of birth, domicile, and profession or occupation of his parents.

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3. The name, surnames, and place of birth of his wife, if he be married.

4. The names, surnames, place of birth, residence, and profession or occupation of the parents of the latter.

5. The names, surnames, place of birth, residence of the children, setting forth if any of them are emancipated.

Whenever it is impossible to express any of the circumstances mentioned previously, a statement shall be made in the inscription of the reason of that impossibility.

ARTICLE 5. In order to be inscribed as Cuban citizens, the persons included in section 1 of article six of the constitution shall prove by means of the discharge or of any other document issued by a competent revolutionary authority that they have belonged to the liberating army.

This proof shall be made by such persons before the custodian of the civil registry of their domicile, should they be in this island, or by means of a special attorney before the custodian of the civil registry at their last place of domicile therein, or of the place of domicile where they intend to fix their residence in Cuba, if they are abroad.

ARTICLE 6. In order to be inscribed as Cuban citizens, the persons included in sections second and third of article sixth of the constitution shall prove before the custodian of the civil registry of their place of domicile in Cuba the residence required by said sections by means of an authentic document, or proof by witnesses made in the manner established in article eight of the present law.

The declaration of intention to which the third section of article six of the constitution refers should be made before the custodian of the civil registry of the domicile which the interested party has in Cuba with the same formalities as in case of inscription.

ARTICLE 7. To be inscribed as Cuban citizens, the persons included in section four of article six of the constitution shall prove before the custodian of the registry of civil status of their place of domicile in Cuba that they have not been registered in the registry of Spaniards opened in pursuance of the provisions of the treaty of Paris of December 10, 1898, that they are of full age, and that they resided in this island on the 11th day of April, 1899.

The proof of not being inscribed in the said registry of Spaniards must necessarily be made by means of a certificate issued by the functionary of said registry.

The circumstances of full age and of residence shall be accredited by means of proof by witnesses received under oath before the custodian of the registry of civil status, the witnesses declaring that they resided on the aforesaid date of the 11th of April, 1899, in the same locality as the moving party making the proof.

The interested party shall present a certificate of the captaincy of the port, or proper authority, wherein shall appear the date of his arrival in the island, the age which he then had, whether he came alone or with a family, the name of the vessel which brought him, and of the captain of the same.

ARTICLE 8. To be inscribed as Cuban citizens, the persons included in section fifth of article sixth of the Constitution shall prove before the custodian of the civil registry of their place of domicile that the circumstances exacted in said section exist as to them by means of a declaration of witnesses received under oath.

ARTICLE 9. In all the inscriptions to which this law refers it shall be made to appear that the interested parties renounce their previous nationality and that they swear to obey the constitution of the Republic, the laws which are actually in force in this island, and those which may be in force in the future.

ARTICLE 10. The custodians of the registry of civil status in this island shall remit to the division of state of the department of state and justice certificate of each inscription which they make in the books of the section of citizenship, and to the section of registries and notarial affairs of the same department a comprehensive table of the inscriptions, classified according to the model which said section shall formulate.

The diplomatic or consular agents shall remit to the department of state certificates of the inscriptions referred to in paragraph second of article one of this law for their transcription in the registry of civil status of the last place of domicile which the interested parties may have had or of that which they propose to have in this island.

The term for the remission provided for in the two preceding paragraphs shall be fifteen days, counted from the day following that on which the inscription of transcription in question shall take notice.

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Failures to fulfill this duty shall be punished gubernatively by the secretary of state.

ARTICLE 11. Those who prior to the promulgation of this law have proven in the extinct department of state and government that there exist as to them the circumstances exacted in articles five, six, seven, and eight of this law are exempted from the proof of the same; as well as those that may have made in the registry of civil status of their domicile the declaration of option or renunciation of nationality to the end that they might be registered as electors according to the provisions of the additional dispositions of order number 218, of October 14, 1901.

ARTICLE 12. All laws, provisions, orders, or decrees contrary to the provisions of this law are repealed.

Therefore I command the obedience and enforcement of this law in its entirety.

Given at the palace of the President, in Havana, October thirtieth, 1902.

T. ESTRADA PALMA.

CARLOS DE ZALDO,
Secretary of State and Justice.

[Enclosure 5 in despatch No. 148.—Translation.]

LAW OF NOVEMBER 21, 1902.

Tomas Estrada Palma, constitutional President of the Republic of Cuba.

Be it known that Congress has enacted and I have sanctioned the following law:

ARTICLE 1. The law of October 30, 1902, published in the Official Gazette of November 7th, 1902, shall be in force on and after the day of the publication of this law in the Official Gazette of the Republic.

Wherefore I command obedience and the enforcement of this law in its entirety.

Given at the presidential palace in Havana the 21st of November, 1902.

T. ESTRADA PALMA.

CARLOS DE ZALDO,
Secretary of State and Justice.

[Enclosure 6 to despatch No. 148.—Translation.]

DECREE NO. 183.

DEPARTMENT OF STATE AND JUSTICE,
DEPARTMENT OF STATE.

By virtue of the powers conferred on me by the constitution, I hereby decree as follows:

1. Native-born citizens of the Republic of Cuba shall have the right to solicit and there shall be issued to them by the secretary of state and justice a certificate affirming their nationality pending the issuance of documents and certificate declaring them to be in possession of citizenship. Those governed by clauses 2 or 3 of article 5 of the constitution shall further allege the compliance with precepts of the law of October 30, 1902.

2. Citizens of the Republic of Cuba who may have obtained citizenship by virtue of any of the clauses of article 6 of the constitution and have complied with the provisions of the law of October 30th, 1902, by registering themselves in the corresponding civil register, shall have the right to solicit from the secretary of state and justice, and there shall be issued to them, letters of Cuban naturalization, signed by the President of the Republic, on presentation of a sworn statement that they are in such political condition.

3. The sworn statement referred to in the two previous articles should be taken at the time of soliciting the certificate of nationality or letters of naturalization and ratifying same before a notary, who will acknowledge the identity of the petitioner and the legitimacy of his signature.

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4. The certificate and letters of citizenship issued in compliance with the foregoing articles shall be sufficient to establish the nationality of the parties in whose favor authorized.

Given at the presidential palace in Havana the 15th day of December, 1902.

T. ESTRADA PALMA,
President.

CARLOS DE ZALDO,
Secretary of State and Justice.

[Enclosure 7 in despatch No. 148.—Translation.]

DECREE NO. 174.

By virtue of the powers conferred on me by the constitution, and at the instance of the secretary of state and justice, I hereby decree:

ARTICLE 1. The rules of clause 1 of decree No. 183, of December 15, 1902, relative to the issuance of certificate of nationality and letters of citizenship shall be classed as follows:

Citizens of the Republic, excepting those who have obtained citizenship by virtue of the provisions of article 6 of the constitution, shall have the right to solicit; and there shall be issued to them by the secretary of state and justice a certificate affirming their nationality pending the issuance of proper documents and certificate declaring them to be in possession of citizenship.

Those, however, coming under clause 2 or 3 of article 5, or the second clause of the transitory rules of the constitution, shall establish proof of having complied with the precepts of the law of October 30, 1902.

In case of married women, minors not emancipated or incapacitated, the petition shall be presented by their lawful representatives, which shall affirm their alleged character, and who shall state under oath that the parties represented have been found to be in such political condition.

A married woman may, however, exercise the said right by obtaining a certified copy of her marriage license, or if she be legally separated from her husband, or exempt from marital state.

Given at the presidential palace in Havana the 21st day of April, 1905.

T. ESTRADA PALMA,
President.

JUAN F. O'FARRILL,
Secretary of State and Justice ad interim.

[Enclosure 8 in despatch No. 148.—Translation.]

LAW OF JUNE 13, 1903.

Tomas Estrada Palma, Constitutional President of the Republic of Cuba.

Be it known that Congress has enacted and I have sanctioned the following law:

The law of October 30, 1902, referring to the inscription in the registry of civil status of the acts by virtue of which Cuban nationality is acquired, lost or recovered, is hereby amended by adding the following:

ARTICLE VII. If the interested party can not obtain said document through lack of proofs, or that obtained be insufficient, they shall furnish, by means of a statement duly sworn to before the custodian of the registry of civil status, the particulars required, with the exception of the name of the master of the vessel, which shall not be presented on the certificate presented.

Wherefore I command the obedience and enforcement of this law in its entirety.

Given at the presidential palace in Havana on the 13th day of June, 1903.

TOMAS ESTRADA PALMA,
President.

The Secretary of State and Justice, ad interim,
JOSÉ M. GARCIA MONTES.

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[Enclosure 9 in despatch No. 148.—Translation.]

LAW OF JUNE 13, 1903.

Tomas Estrada Palma, constitutional President of the Republic of Cuba.

Be it known that Congress has enacted and I have sanctioned the following law:

ARTICLE 1. That for foreigners to exercise the rights conferred on them by numbers one and two of article 6 of the constitution it shall be sufficient that they petition in writing, within the six months time fixed by the constitution, their desire to acquire Cuban citizenship, to any authorized official or functionary of the Republic, the date of presentation of said petition to be duly certified.

ARTICLE 2. All officials or functionaries of the Republic having in their possession a petition for naturalization, as prescribed by the foregoing article, shall transmit same, if requested to do so by the party at interest, to the corresponding custodian of the civil registry within three months following the publication of this law.

ARTICLE 3. The functionary or official referred to in the preceding article must accompany said petition with a certificate, duly sworn to, to the effect that same had been presented within the constitutional time limit.

If the presentation shall have been made before a municipal judge in charge of the civil registry, the sworn certificate shall be attached to the bottom of the petition and shall in all cases state such fact in the inscription.

ARTICLE 4. The transmittal of such petitions, until naturalization may be definitely inscribed, shall conform to the rules and regulations established by the law of October 30, 1902.

ARTICLE 5. The three months referred to in article 3 having elapsed without any action by the party at interest, the petition for naturalization, to which reference is made in article 1 of this law, shall become null and void and of no further effect.

ARTICLE 6. This law shall be in force and effect from and after the day following its publication in the Official Gazette of the Republic.

Wherefore I command the obedience and enforcement of this law in its entirety.

Given at the presidential palace in Havana on the 13th day of June, 1903.

T. ESTRADA PALMA, *President.*

The Secretary of State and Justice ad interim.

JOSÉ M. GARCÍA MONTES.

DENMARK.

[Enclosure in despatch from Mr. O'Brien, minister to Denmark, September 25, 1906.—Translation.]

LAW CONCERNING THE ACQUIREMENT AND THE FORFEITURE OF THE RIGHT AS A DANISH-BORN.

We, Christian the Ninth, by the grace of God, King to Denmark, etc.

Make known the "Rigsdag" has voted and we by our assent sanctioned the following law:

§ 1. A legitimate child whose father enjoys the right of a Danish-born acquires by its birth the right of a Danish-born, whether the birth takes place in this country or in a foreign country.

§ 2. Persons who have not acquired the right of a Danish-born by birth, but who are born in this country, acquire the right of Danish-born when they continue after their birth to have their domicile here until they have completed their nineteenth year, unless they during

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the last year declare in writing before a chief magistrate (in Copenhagen before the "magistrat") that they do not wish to acquire the right of a Danish-born and besides prove by a suitable certificate their citizenship in another country. This declaration can not be made with legal effect by a person, being a child of a foreigner, who has himself in the above-named manner declared to maintain his foreign citizenship.

When a man acquires the right of a Danish-born in virtue of this section, it comprises also his wife and his legitimate children.

§ 3. A foreign woman marrying a man possessing the right of a Danish-born acquires this right by her marriage.

If the consorts have got children with each other previous to the marriage, these children acquire the right of Danish-born, provided that they are minors (under eighteen years).

§ 4. The right of a Danish-born is also acquired by naturalization, according to section 51 of the constitutional law of the 28th of July, 1866.[a]

The naturalization of a man comprises his wife and his legitimate minor children, if not otherwise provided in the individual case.

§ 5. The right as a Danish-born is forfeited by acquiring citizenship in another country. When a man becomes naturalized in another country, his wife or legitimate minor children, unless they remain domiciliated here, forfeit their right as Danish-born, provided that they become citizens in the foreign country by his naturalization there.

Anybody wishing to become a citizen of a foreign country may be released by royal decree from his connection as a Danish citizen. The release is, however, granted on condition that he, within a certain time, becomes a citizen of another country.

§ 6. A woman who marries a man not possessing the right of a Danish-born forfeits her right as a Danish-born.

If the consorts have got children with each other previous to the conclusion of the marriage, these children forfeit also their right as Danish-born if they are minors at the time when their parents contract marriage. If they are of age at that time, they keep their right as Danish-born.

§ 7. If a Danish man or a Danish unmarried woman, after having completed their eighteenth year, or a widow after the death of her husband, or a divorced wife after her divorce during ten years without intermission have been domiciliated in foreign countries, they forfeit their right as Danish-born (see, however, section 8) unless the absence is caused by the public service of the Danish Government or they retain their right as Danish-born by a declaration made in writing before the Danish legation or consulate concerned, in compliance with the regulations laid down on that subject, before the expiration of the said ten years. This declaration must, to remain effective, be repeated before the expiration of the tenth year from the latest declaration.

Only a person who himself has emigrated and his children, as well as the widows of such persons, are admitted to make such a declaration.

[a No foreigner can be naturalized except by law.]

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When a man (according to this section) forfeits his right as a Danish-born, the loss is extended to his wife and his legitimate minor children, unless they remain in this country.

The provisions of this section can be abolished or restricted in relation to a foreign power by treaty with that power.

§ 8. A person who has forfeited his right as a Danish-born according to section 7, but who has not become a citizen of another country, recovers his right as a Danish-born by domiciliating himself in this country or even without taking his domicile here by special permission of the King.

The right as a Danish-born, when recovered in this way by a man, comprises his wife and his legitimate minor children, even when they remain domiciliated in a foreign country, and regardless of the marriage having been contracted or the birth having taken place after the husband (respectively the father) has forfeited his right as a Danish-born, and consequently the marriage and the birth having not originally conferred the right as a Danish-born upon the wife and children.

§ 9. An illegitimate child whose mother enjoys the right of a Danish-born acquires by birth the right of a Danish-born, whether the birth takes place in this country or in a foreign country.

In the instances where a legitimate child according to this law follows the condition of the father, the position of an illegitimate child as to citizenship depends on the condition of the mother in his respect.

If the condition of the mother as to citizenship is altered in consequence of her marriage with a man who is not father to her children, the condition of the children as to citizenship is not altered.

§ 10. Children found in this country whose position as to citizenship is unknown are considered till their real position can be ascertained to have the right of a Danish-born.

§ 11. Section 2 of this law applies also to persons born before this law comes into force, but who at that time had not yet obtained the right of a Danish-born according to section 9 of the ordinance of the 15th of January, 1776. A woman living, when this law comes into force, in marriage with a husband having the right of a Danish-born acquires the right of Danish-born.

In other respects the provisions of this law are only to be applied as far as the fact by which the right of Danish-born is acquired or forfeited has taken place after the coming into force of this law.

§ 12. This law does not alter the position in law granted under the existing rules to persons who are not Danish-born in consequence of their having domicile here or having had a fixed sojourn here a certain time.

§ 13. This law is applicable in all parts of the Danish State like the former provisions in this matter which they replace.

It does not apply to persons whose right as Danish-born is reserved by the Article XIX of the treaty of peace of the 30th of October, 1864.

Whereto all whom it may concern have to conform themselves.

Given at Amalienborg, on the 19th of March, 1898, under our royal hand and seal.

CHRISTIAN R. [L. S.]

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DANISH WEST INDIES.

[Enclosure in despatch from Mr. Payne, American consul at St. Thomas, August 1, 1906.]

SOME REMARKS BY THE GOVERNMENT SECRETARY OF THE DANISH WEST INDIES ON THE BIRTHRIGHT OF DANISH NATIVES WITH SPECIAL REFERENCE TO THE DANISH WEST INDIES.

The rules about the acquisition and forfeiture of Danish birthright are to be found in the ordinance of 15th January, 1776, and the law of 19th March, 1898, of which last-mentioned law copies are annexed.

These rules are valid in *all* parts of the Danish State, consequently as well in the European possessions of the State, as in the American (West Indian) possessions. Therefore when in the following remarks the word "Denmark" is used, it is used as synonymous with the Danish State, including the Danish West Indies.

I. The acquisition of birthright as Danish native.

The birthright as Danish native is acquired:

(*a*) By every legitimate child whose *father* is a Danish native, whether the child is born in Denmark (including the Danish West Indies) or abroad.

For illegitimate children the birthright as Danish native is acquired when the *mother* has this right and without regard to *where* the birth takes place.

(*b*) By the children of foreigners born in Denmark (including the Danish West Indies), provided that these children from the time of their birth till they have completed their nineteenth year have been domiciled in Denmark (including the Danish West Indies), unless such persons have in the course of the last year made a declaration to the superior authority (in the West Indies the governor) to the effect that they do not wish to acquire Danish birthright, and prove that they are in possession of the right of citizenship in a foreign country.

This declaration can, however, not be made with legal effect by one who is the child of an alien who has in the same manner (by declaration) demonstrated his right of citizenship of a foreign country.

For the better explanation of this the following remarks are made:

When a foreigner has taken up his residence within the Danish State he continues to be a foreigner unless he be naturalized by law. His legitimate children born here will acquire Danish birthright by remaining within the Danish State unless they, during the time between their eighteenth and nineteenth year make a declaration to the effect that they do not wish to acquire the birthright as Danish natives. But if the family continues to be domiciliated here, the children of those who by making the above-mentioned declaration have maintained their foreign citizenship are Danish natives and can not by any declaration renounce their position as such. It must, however, here be remembered that the legitimate children of the daughters become foreigners if the father himself is a foreigner by birth when in due time they make the aforesaid declaration.

(*c*) By foreign women who marry a Danish native, and

(*d*) By foreigners who by a law passed in the Rigsdag and sanctioned by the King acquire birthright as Danish natives. Foreigners domiciliated in the Danish West Indies and who desire to acquire the birthright as Danish natives must consequently, in the same man-

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ner as foreigners domiciliated in European Denmark, apply to the home government in order to acquire this right.

II. The forfeiture of the birthright as Danish native.

The birthright as Danish native is forfeited:

(*a*) When the native acquires citizenship in a foreign land.

(*b*) By a native woman who marries a foreigner.

(*c*) When a native for ten years uninterruptedly has been domiciliated abroad, unless he within the expiration of this term of ten years, before the Danish ambassador or consular official in the place concerned, makes a declaration to the effect that he reserves his rights as a Danish native. This declaration must be repeated every tenth year. When the right as Danish native is forfeited in this manner the wife and minor children of the person will also lose their rights as Danish natives in so far as they are living abroad.

Danish natives from the Danish West Indies who are domiciliated abroad and who wish to maintain their rights as Danish natives must consequently before ten years have elapsed after their arrival to the foreign land make a declaration as aforesaid to a Danish ambassador or consular official if they wish to maintain their rights as Danish natives.

Whenever their right as Danish native has been lost by the omission of making the said declaration in due time, the person concerned will recover his rights as Danish native by taking up his abode again within Danish territory, in so far as he has not become a citizen of a foreign country or otherwise by special permission from the King.

III. The privileges and the special duties of Danish natives.

As already stated, the rights attached to the possession of birthright as a Danish native are the same whether the person concerned has been born in the one or the other part of the Danish State, whether in European Denmark or in the Danish West Indies.

These rights are in all essentials the following:

(*a*) No Danish native can be banished from the Danish territory.

(*b*) While staying abroad any Danish native can, whenever the circumstances call for it, obtain the help and protection of the Danish State through the Danish representatives abroad (ambassadors or consular officials).

(*c*) Only Danish natives can obtain royal appointment in offices *under the Danish State*, while foreigners can obtain appointment in municipal offices.

(*d*) While in European Denmark, as in most other States, only the natives are in possession of franchise for the legislative assembly (Rigsdagen), the colonial law of 1863 forms an exception for the Danish West Indies in so far as it grants franchise for the colonial council to foreigners who for five years have been domiciliated in the Danish West Indies. Danish natives, however, become electors to the colonial council after two years' stay in the Danish West Indies.

(*e*) In European Denmark only Danish natives are entitled to support from the Danish State, while in the Danish West Indies foreigners obtain this right after having been domiciliated there for five years.

(*f*) Danish natives have an exclusive right to benefit from the State's charitable institutions as well as for assistance from the University and the Academy for Fine Arts in Copenhagen.

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The special duties incumbent on Danish natives consist chiefly in the more intense obligation to loyalty toward the King and the Government of the country. Furthermore, the natives who are able to carry arms are bound to a greater extent than the domiciliated foreigners to defend the country in case of necessity (wars, etc.).

Here it is, however, to be remarked, that they who are domiciliated in the Faroe Islands, in Iceland, Greenland, and in the Danish West Indies at present are not bound to do military duty in the Danish army or navy.

IV. The rights of foreigners domiciliated within Danish territory:

While the Danish natives have free admissions to the territory of the Danish State, this last can lay down what conditions it chooses for the admission of foreigners to its territory.

Foreigners are allowed to remain within Danish territory as long as they do not become a burden for the public. In the Danish West Indies, but not in European Denmark, foreigners acquire settlement when they have been domiciled there for five years.

For crimes committed in foreign parts foreigners can be extradited, while Danish natives never are extradited to a foreign power. Besides, foreigners, but not natives, are under certain conditions exposed to banishment by judgment from a court of justice.

Foreigners are allowed to carry on trade within Danish territory. In the Danish West Indies in certain cases a Burgher-brief and (as in former days also in European Denmark) the making of an oath is required. The making of this oath does, however, not otherwise change anything in the position of the foreigner, and does not confer on him the right of Danish native.

After having been domiciliated in the Danish West Indies for five years the foreigner acquires franchise for the colonial council. Concerning this provision, which is exceptional for the Danish West Indies, reference is made to the above remarks.

Foreigners, but not natives, can be banished from the State whenever the interests of the Danish State should make it desirable.

Every right acquired by a foreigner through the domiciliation ceases when he gives up his domicile on Danish territory.

DOMINICAN REPUBLIC.

Mr. Dawson, minister to Dominican Republic, to Mr. Root, Secretary of State, August 16, 1906.

AMERICAN LEGATION,
Santo Domingo, August 16, 1906.

SIR: Complying with your circular instruction dated July 9, 1906, in regard to the information desired by the board to inquire into foreign citizenship laws, I have the honor to report that the Dominican enactments on the subject are:

1. Articles 7 and 8 of the constitution, adopted June 12, 1896, and which is now in vigor. A transcript of these articles is herewith inclosed. These provisions or others substantially identical have been in the Dominican constitutions since March 29, 1875. Cer-

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tain constitutions in force before that date provided that the children of foreigners residing in the country should not be considered as Dominican, although such children were born on Dominican soil.

2. Those provisions of the Code Napoleon which apply to citizenship, domicile, etc. The Code Napoleon was enacted as Dominican legislation as soon as the Republic became independent, and has ever since constituted the body of the substantive law of the country. In 1884 a translation was made by official authority into the Spanish language, and this is the authorized version and the one cited to the courts. It does not differ materially from the French version, and in the provisions referring to the subject inquired about, not at all.

Where the provisions of the inclosed articles of the constitution differ from the code of 1884, it is the former that prevail. For example, the constitution provides that all persons (including women) born on Dominican soil are Dominican citizens. The code provides that a married woman takes the nationality of her husband. But a woman born in the Republic may take out a license as a steamship agent—a right confined to Dominican citizens—although she has married a foreigner.

* * * * * * *

There are no special provisions in regard to the means by which citizenship may be lost, or as to renunciation of citizenship. A citizen may lose his political rights for certain crimes or the acceptance of employment by a foreign government, but it is expressly provided (art. 8 of constitution) that no Dominican can be recognized as having another nationality while he is residing in this country. The legal presumption from the affirmative terms used is that the naturalization of a Dominican abroad would be recognized by this Government as long as he did not return. So far as I have been able to ascertain, there has been no legal decision or holding of the foreign office on the point.

But there is no doubt that the meaning of the constitution is that in any event the Dominican citizenship of a native naturalized abroad would revive upon his return. As a matter of fact, there are a considerable number of native Dominicans now resident here who claim foreign nationality, in some cases because they are the children of foreign citizens, and in others because they have been naturalized in some other country. It would seem inevitable that grave disputes would arise therefrom between the foreign office and the diplomatic representatives of the other countries, but in practice such disputes have been avoided for the most part—altogether so far as this legation is concerned.

* * * * * * *

There is no separate enactment in regard to naturalization and the acquisition of Dominican citizenship. By paragraph 5 of article 7 any foreigner who has acquired a permanent domicile here may, after two years of residence, become naturalized. He effects it by making application with proofs to the governor or other representative of the central government, and a letter of naturalization signed by the President and countersigned by a secretary of state, accordingly issues.

I have, etc.,

T. C. DAWSON.

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[Enclosure.]

CONSTITUTION.

[Translation.]

TITLE 2.—*Dominicans.*

ARTICLE 7. The following are Dominicans:

First. All persons who have been or may be born within the territory of the Republic, whatever be the nationality of their parents.

Second. The children of Dominican fathers or mothers who were born in another territory, if they come to the country and establish their domicile in it.

Third. All natives of the Spanish-American republics, and those of the neighboring Antilles who may desire to be Dominicans, after they have resided one year within the territory of the Republic and provided they manifest this desire by taking an oath to defend the interests of the Republic, before the governor of the province or district where they reside and have obtained their naturalization papers.

Fourth. All persons naturalized according to the laws.

Fifth. All foreigners of any friendly nation, provided they establish their domicile within the territory of the Republic and declare their desire to become Dominicans, and provided they shall have resided here at least two years and expressly renounce their nationality before the proper authority.

For the purposes of this article the legitimate children of foreigners residing in the Republic as representatives or in the service of their country shall not be considered as being born within the territory of the Republic.

ARTICLE 8. No Dominican shall be recognized as having any other than Dominican nationality while he resides in the Republic.

CIVIL CODE.[a]

[Translation.]

CHAPTER I.—*The enjoyment of civil rights.*

ARTICLE 7. * * *

ARTICLE 8. Every Dominican shall enjoy civil rights.

ARTICLE 9. The following are Dominicans.

First. All persons who have been or may be born within the territory of the Republic, whatever be the nationality of their parents.

§ For the purposes of this article the legitimate children of foreigners residing in the Republic as representatives or in the service of their country shall not be considered as being born within the territory of the Republic.

Second. All natives of the Spanish-American republics and those of the neighboring Antilles who may desire to be Dominicans, after they have resided one year within the territory of the Republic.

Third. All persons naturalized according to the laws.

Fourth. All foreigners of any friendly nation, provided they establish their domicile within the territory of the Republic and declare their desire to become Dominicans, and provided they shall have resided here at least two years and expressly renounce their nationality before the proper authority.

ARTICLE 10. The children of Dominican fathers or mothers who were born in another territory, if they come to the country and establish their domicile in it.

ARTICLE 11. A foreigner shall enjoy the same civil rights in the Republic as those granted to Dominicans by the treaties of the nation to which the foreigner belongs.

ARTICLE 12. A foreign woman married to a Dominican shall follow the status of her husband.

ARTICLE 13. A foreigner whom the Government has allowed to establish his domicile in the Republic shall enjoy all civil rights while he resides in the country.

ARTICLE 14. A foreigner, although he may not reside in the Republic, may be summoned before the courts of the latter for the purpose of compelling him to carry out obligations contracted by him in the Republic and with a Dominican; he may also be brought before the courts with regard to obligations contracted in a foreign country with Dominicans.

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[a] Official edition of 1884.

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CHAPTER II.—*The loss of civil rights.*

ARTICLE 17. The rights of citizenship are lost:

First. By serving or engaging to serve against the Republic.

Second. By having been sentenced to a penalty involving corporal or infamous punishment.

Third. By accepting, within Dominican territory, employment from a foreign government without the consent of the National Congress.

Fourth. By committing fraudulent bankruptcy.

ARTICLE 18. All Dominicans except those who have lost their rights through the cause set forth in the first paragraph of the foregoing article may be reinstated therein.

ARTICLE 19. A Dominican woman who contracts marriage with a foreigner shall follow the status of her husband. If she becomes a widow, she shall recover her Dominican nationality provided she resides in or returns to the Republic and by declaring that she desires to settle again within Dominican territory.

ARTICLE 20. Persons who recover their Dominican nationality in the cases contemplated in articles 10, 18, and 19 shall not be entitled to avil themselves thereof until they have fulfilled the conditions imposed by said articles, and then only with regard to the exercise of such rights as are granted them after that time.

ARTICLE 21. A Dominican who, without the authorization of the Government, enlists in a foreign army or affiliates himself with any foreign military body, shall lose his Dominican nationality; he shall not be allowed to return to the Republic except by permit of the Government, and he shall only recover his Dominican nationality by fulfilling the conditions imposed on a foreigner in order to acquire such nationality. All of which shall be without prejudice to the penalties provided by the criminal law against Dominicans who have taken up or may take up arms against their country.

ECUADOR.

Mr. Lee, minister to Ecuador, to Mr. Root, Secretary of State, November 15, 1906.

AMERICAN LEGATION,
Quito, November 15, 1906.

SIR: Referring to the Department's instruction of October 24, I have the honor to embody herewith the Ecuadorean regulations concerning citizenship, expatriation, protection of citizens, etc.

The following are considered Ecuadoreans:

1. Those persons born in Ecuadorean territory and of Ecuadorean parents.

2. Those born in the same territory and of foreign parents who are residents in the country, if they do not make known their intention of keeping the nationality of their fathers.

3. Foreigners who profess the sciences, arts, industries, or who are proprietors in the country, declare their intention to become Ecuadoreans, and obtain naturalization papers.

4. Foreigners who obtain from Congress naturalization papers for services rendered to the Republic.

5. Those born in foreign territory of Ecuadorean parents and who declare their intention to keep the nationality of their fathers.

Ecuador protects its citizens in foreign countries in accordane with the usual practices of international law.

Ecuadoreans can be naturalized in foreign countries and regain their original nationality after some years' residence in Ecuador, and if they declare their intention to become again Ecuadoreans.

I have, etc.,

JOSEPH W. J. LEE.

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CONSTITUTION (1897).

[Translation.*]

CHAPTER II.

SECTION 1.—*Of the Equatorians.*

6. The following are Equatorians:
(1) Those who are born in the territory of the Equator of Equatorian father or mother;
(2) Those born in the said territory of foreign parents if they reside therein;
(3) Those who, born in a foreign state of Equatorian father or mother, come to reside in the Republic and express their wish to become Equatorians;
(4) Natives of other countries who may be in the enjoyment of Equatorian nationality;
(5) Foreigners who profess science, art, or useful industry, or who may be owners of real property or invested capital, and who, after having resided one year in the Republic, declare their intention of becoming domiciled therein and obtain letters of naturalization;
(6) All who obtain nationality rights for services to the Republic;
7. No Equatorian, even although he may acquire another nationality, shall be exempted from the duties imposed by the constitution and the laws so long as he remains domiciled in the Republic.

SECTION 2.—*Of the citizens.*

8. To be a citizen it is necessary to be 18 years of age and able to read and write.
9. The rights of citizenship are lost—
(1) By entering the service of a nation at war with the Republic;
(2) By naturalization in another country; and
(3) In the other cases determined by the laws.
10. Equatorians who may have lost the rights of citizenship shall be able to obtain rehabilitation from the Senate; but those sentenced to confinement or imprisonment for a term exceeding six months shall not obtain rehabilitation until their sentence has expired.
Any Equatorian who may be naturalized in another country shall recover his rights of citizenship if he returns to the Equator and, renouncing his foreign nationality, declares his intention of reassuming Equatorian citizenship.
11. The rights of citizenship are suspended—
(1) By judicial interdiction;
(2) By judicial sentence pronounced in consequence of infractions of the law which entail the loss of the rights of citizenship; and
(3) By judicial sentence against a public official or functionary.

* Text as printed in 89 British and Foreign State Papers, 1095.

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FRANCE.

[Enclosure in despatch from Mr. Vignaud, chargé d'affaires, August 1, 1906.]

[Memorandum.]

FRENCH CITIZENSHIP.

I. French citizens by birth:

Are French—

1. Those born in France of a Frenchman. (Law of June 26, 1889, art. 8, new, sec. I of the Civil Code.)

2. Those born in a foreign country of a Frenchman. (Ibid.)

3. Those born in France of unknown parents or of parents whose nationality is unknown. (Ibid., sec. 2.)

4. Those born in France of an alien. (Ibid., sec. 4.)

With regard to this last class of individuals, the law states that they are French if at the time of their majority they are domiciled in France; but in fact the authorities assume that they are always so domiciled. Practically every individual born in France is held to be French.

II. French citizens by naturalization:

Naturalization is conferred in France by the executive and not by the courts of justice. The courts, however, have jurisdiction in cases of contested nationality.

Are naturalized French in pursuance of the law without making any application—

1. The alien woman who marries a Frenchman. (Law of June 26th, 1889, art. 12, new, of the Civil Code.)

2. The minor children of an alien who becomes French. (Ibid.)

III. Those who may be naturalized on their application:

1. Aliens who have obtained permission to establish their domicile in France, after three years of such domicile. (Same law, art. 8, sec. 5, new, of the Code.)

2. Aliens who can show an uninterrupted residence of ten years. (Ibid.)

3. Aliens who have fulfilled abroad during ten years duties conferred by the French Government. (Ibid.)

4. Aliens who have been admitted to domicile in France after one year of such domicile, if they have rendered any service in France or displayed exceptional talents. (Ibid.)

5. Aliens who marry a French woman, after one year of authorized domicile. (Ibid.)

6. The woman married to an alien who becomes French by naturalization. (Same law, art. 12, new, of the Code.)

7. The children of full age of a naturalized alien. (Ibid.)

IV. Frenchmen who can decline French nationality:

1. Those born in France of an alien who, during the year following their majority, claim the nationality of their father, provided they produce (1) a certificate of the government of the country to which they claim to belong supporting such a claim, and (2) another certificate from the same government stating that they have responded to

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the military call of the country or that they are not subject to such a call. (Same law, art. 8, sec. 4, new, of the Code.)

(Through their embassies or legations most of the European governments furnish those certificates when needed. As our only form of certifying to American citizenship is a passport, and as a passport is not considered by the French authorities as answering to the certificate mentioned by the law, this embassy couples with the passport a statement that it is equivalent to said certificate.)

2. Those who have discharged all their military obligations toward France in the active army and in the reserve of the active army. (Same law, art. 17, sec. 1, new, of the Civil Code.)

3. The minor children of a naturalized Frenchman when coming of age and during the year following their majority, but not later on. (Same law, art. 12, new, of the Code.)

V. Frenchmen who can not change their nationality without the consent of the Government:

1. Those born in France of an alien who was himself born French. (Same law, art. 8, sec. 3, new, of the Civil Code.)

2. Those who are still subject to military service in the active army and in its reserve. (Art. 17, new, of the Civil Code.)

VI. Conditions under which Frenchmen may cease to be French:

1. By being naturalized abroad. (Art. 17, sec. 1, new, of the Civil Code.)

2. By accepting military service or official functions in a foreign country. (Art. 17, sec. 4.)

But in either case a Frenchman remains French if at the time of his naturalization or of his taking service abroad he is still liable to military service in France. (Art. 17.)

3. By the marriage of a French woman to an alien, unless, according to the law of the country of her husband, she does not assume his nationality. (Art. 19 of the Civil Code.)

Formerly permanent establishment in a foreign country was considered as evidence of no intention of returning to France and involved the loss of French nationality; but that clause of the Code has been repealed. A Frenchman remains French as long as he does not renounce his nationality and assume another one by an act of his own volition.

In short, the French system with regard to nationality can be summed up in the two following propositions:

1. Are French all those born in France, whatever the nationality of their parents may be, and all those born abroad from a French father.

2. No Frenchman can legally be naturalized abroad before having been released from all military obligations in France, unless it be with the permission of the Government—a permission which is very seldom granted.

It is to be noted that the naturalization of a Frenchman acquired by him during the time he is liable to military service is considered as void even after he has passed the age during which he might have been called for such service.

HENRY VIGNAUD.

PARIS, *August 1, 1906.*

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[Enclosure in despatch from Mr. Vignaud, August 1, 1906.]

LAW ON NATIONALITY OF JUNE 26, 1889.

[Translation.]

Promulgated in the *Journal officiel* of June 28, 1889.

The Senate and the Chamber of Deputies have adopted, and

The President of the Republic promulgates the law in tenor as follows:

ARTICLE 1. Articles 7, 8, 9, 10, 12, 13, 17, 18, 19, 20, and 21 of the Civil Code are modified as follows:

ARTICLE 7. The exercise of civil rights is independent of the exercise of political rights, which are acquired and preserved in accordance with the constitutional and electoral laws.

ARTICLE 8. Every Frenchman shall enjoy civil rights.

The following are Frenchmen:

1. Every person born of a Frenchman in France or abroad.

A natural child whose filiation is established during minority, either by recognition or judgment, follows the nationality of the parent in respect of whom the proof has first been established. If the filiation is established in respect of the father or mother by the same act or the same judgment, the child follow the nationality of the father.

2. Every person born in France of unknown parents or of parents whose nationality is unknown.

3. Every person born in France of a foreigner himself born there.[a]

4. Every person born in France of a foreigner and who, at the time of attaining his majority, is domiciled in France, unless, during the year following his majority, as regulated by the French law, he has declined French nationality and proved that he has preserved the nationality of his parents by a certificate in due form from his government, which shall remain attached to the declaration, and unless he has, moreover, produced, where such exists, a certificate showing that he has answered a call to the colors, in conformity with the military law of his country, save the exceptions provided in treaties.

5. Naturalized foreigners.

The following may be naturalized:

1. Foreigners who have obtained the authorization to establish their domicile in France, in conformity with article 13 hereinbelow, after three years' domicile in France, dating from the filing of their application at the ministry of justice.

2. Foreigners who can prove an uninterrupted residence of ten years.

A sojourn in a foreign country in the discharge of an office conferred by the French Government is considered equivalent to residence in France.

3. Foreigners admitted to establish their domicile in France, after one year, if they have rendered important services to France, if they have brought thither distinguished talents, if they have introduced either an industry or useful inventions, if they have created industrial or other establishments or agricultural enterprises, or if they have been connected in any way with the military service in the French colonies or protectorates.

4. A foreigner who has married a French woman, also after one year of authorized domicile.

The request for naturalization is decided by decree, after an investigation as to the moral character of the foreigner.

ARTICLE 9.[a] Every person born in France of a foreigner and who is not domiciled there at the time of attaining his majority may, up to the age of 22 years completed, make his application to establish his domicile in France, and, if he establishes it there within a year after filing his application, he may claim French nationality by means of a declaration which shall be filed in the ministry of justice.

If he is less than 21 years of age completed, the declaration shall be made by his father in his name, and in case of death (of his father), by his mother; in

[a] See infra, law of July 22, 1893.

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case of the death of both father and mother or of their being excluded from guardianship, or in the cases contemplated in articles 141, 142, and 143 of the Civil Code, by the guardians authorized by decision of the family council.

He also becomes a Frenchman if, having been included in the recruiting list, he takes part in the recruiting operations without objecting on the grounds of being a foreigner.

has lost French nationality may claim such nationality at any age, under the

ARTICLE 10. Every person born in France or abroad of parents of whom one conditions laid down in article 9, unless, being domiciled in France and called to the colors at the time of reaching his majority, he has invoked his foreign nationality.

ARTICLE 12. A foreign woman who has married a Frenchman shall follow the status of her husband.

A woman married to a foreigner who becomes naturalized as a Frenchman, and the children of full age of a naturalized foreigner, may, if they so request, acquire French nationality without fulfilling any condition as to residence, either by the decree conferring such nationality on the husband, the father, or the mother, or by virtue of the declaration which they shall make in accordance with and under the conditions of article 9.

The minor children of a father or surviving mother who becomes naturalized as French also become French unless they decline this nationality within the year following their nationality, in conformity with the provisions of article 8, paragraph 4.

ARTICLE 13. A foreigner who has been authorized by decree to establish his domicile in France shall enjoy all civil rights there.

The effect of the authorization shall cease at the expiration of five years if the foreigner does not ask to be naturalized or if his request is denied.

In case of death before naturalization, the authorization and the period of residence which has followed it shall accrue to the benefit of the wife and of the children who were minors at the date of the decree of authorization.

ARTICLE 17. The following lose their French nationality:

1. A Frenchman naturalized in a foreign country or who acquires foreign nationality at his own request by the effect of the law.

[redacted] is still subject to the obligations of military service in the active army, h[redacted]uralization abroad will not work a loss of his French nationality unless it has been authorized by the French Government.

2. A Frenchman who has declined French nationality in the cases contemplated by paragraph 4 of article 8 and by articles 12 and 18.

3. A Frenchman who, having accepted a public office from a foreign government, continues to hold it in spite of an injunction by the French Government to resign it within a certain period.

4. A Frenchman who, without the authorization of the Government, accepts military service abroad, subject, however, to the penal laws against Frenchmen who shirk the obligations of the military law.

ARTICLE 18. A Frenchman who has lost his French nationality may recover it, provided he resides in France, by securing reinstatement by decree. French nationality may be conferred by the same decree on the wife and on the children who are of age, if they so request. The minor children of the father or mother reinstated become French unless they decline this nationality within a year following their majority, in conformity with the provisions of article 8, paragraph 4.

ARTICLE 19. A French woman who marries a foreigner follows the status of her husband unless her marriage does not confer upon her the nationality of her husband, in which case she remains French. If her marriage is dissolved by the death of her husband or by divorce, she recovers her French nationality, with the authorization of the Government, provided she resides in France or returns there, by declaring that she has returned there and that she wishes to reside there permanently.

In case the marriage is dissolved by the death of the husband, French nationality may be granted by the same decree of reinstatement to the minor children, at the request of the mother, or by a subsequent decree, if the request is made by the guardian with the approval of the family council.

ARTICLE 20. Persons who acquire French nationality in the cases contemplated by articles 9, 10, 18, and 19 can only avail themselves thereof with regard to rights which have accrued to their benefit since that time.

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ARTICLE 21. A Frenchman who, without the authorization of the Government, enters military service abroad can return to France only by virtue of a permit granted by decree, and can recover his French nationality only by fulfilling the conditions imposed in France on foreigners for acquiring ordinary naturalization.

2. The present law is applicable to Algeria and to the colonies of Guadeloupe, La Martinique, and La Réunion.

However, the senatus consultum of July 14, 1865, and other regulations relating specially to naturalization in Algeria shall continue in force.

3. A naturalized foreigner enjoys all the civil and political rights of a French citizen. Nevertheless he is not eligible to the legislative assemblies until ten years after the decree of naturalization, unless a special law shortens this period. The period may be reduced to one year.

Frenchmen who recover their nationality after having lost it immediately acquire all the civil and political rights, including eligibility to the legislative assemblies.

4. The descendants of the families who were exiled at the revocation of the edict of Nantes shall continue to benefit by the provisions of the law of December 15, 1790, but on condition that a special decree be issued for each applicant. This decree shall produce effect only for the future.

5. For the execution of this law a set of regulations of public administration shall determine: (1) The conditions under which its provisions are applicable to the colonies other than those mentioned in article 2 above, as well as the formalities to be observed for naturalization in the colonies; (2) the formalities to be fulfilled and the proofs to be furnished in connection with ordinary naturalization and naturalization by favor in the cases contemplated by articles 9 and 10 of the civil code, as well as in connection with the renunciation of French nationality in the cases contemplated by articles 8 (paragraph 4), 12, and 18.

6. The decrees of April 6, 1809, and August 26, 1811, are abrogated; likewise the laws of March 22, 1849; February 7, 1851; June 29, 1867; December 16, 1874; February 14, 1882; June 22, 1883, and all provisions contrary to the present law.

Temporary provisions.

Every permit to establish domicile obtained prior to the present law shall become null and void if within a period of five years from the promulgation thereof it has not been followed by an application for naturalization, or if the application for naturalization has been rejected.

The present law, having been debated and adopted by the Senate and Chamber of Deputies, shall be enforced as a law of the nation.

Done at Paris, June 26, 1889.

CARNOT.

THÉVENET,
Custodian of the Seals,
Minister of Justice and Public Worship.

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[Enclosure in despatch from Mr. Vignaud, August 1, 1906.]

LAW MODIFYING ARTICLE 8, PARAGRAPH 3, AND ARTICLE 9 OF THE CIVIL CODE RELATIVE TO THE DECLARATIONS MADE WITH A VIEW TO ACQUIRING OR DECLINING FRENCH NATIONALITY, OF JULY 22, 1893.

[Translation.]

Promulgated in the *Journal officiel* of July 23, 1893.

The Senate and Chamber of Deputies have adopted, and the President of the Republic promulgates the law in tenor as follows:

ARTICLE 1. Paragraph 3 of article 8 of the Civil Code is modified thus:

The following are Frenchmen: * * *

3. Every person born in France of foreign parents, of whom one was also born there, except that he has the privilege, if it was his mother who was born in France, of declining French nationality during the year following the attainment of his majority, by conforming to the provisions of subdivision 4 hereinafter.

A natural child may, under the same conditions as a legitimate child, decline French nationality when the parent who was born in France is not the one whose nationality the child ought, according to subdivision 1, second paragraph, to follow.

2. Persons to whom article 8, paragraph 3 modified, reserves the right to claim foreign nationality, and who have attained their majority at the date of promulgation of the present law, may claim such nationality by fulfilling the conditions prescribed within the period of one year dating from this promulgation.

3. Article 9 of the Civil Code is modified as follows:

Every person born in France of a foreigner and who is not domiciled there at the time of attaining his majority may, up to the age of 22 years completed, make his application to establish his domicile in France, and, if he establishes it there within a year after filing his application, he may claim French nationality by means of a declaration, which must be filed in the ministry of justice in order to be valid.

The filing shall be refused if it is found from the documents produced that the declarant does not fulfill the conditions laid down by the law, in which case he may appeal before the civil courts, as prescribed by articles 855 et seq. of the Code of Civil Procedure.

A notification of the refusal, stating grounds, should be given to the claimant within a period of two months from his declaration.

The filing may be refused, moreover, on the grounds of unworthiness even if the declarant fulfills all the legal conditions; however, in this case the matter must be decided and the declarant duly notified by a decree issued with the advice of the council of state within a period of three months from the declaration, or, if there has been a contest, from the day on which the judgment admitting the claim became final.

The declarant shall be entitled to produce documents and statements before the council of state.

If the notifications above referred to are not made within the periods indicated, the minister of justice shall, upon the expiration of these periods, remit to the declarant upon his request a copy of his declaration upon which the fact of its being filed is noted.

The declaration shall be effective from the day on which it was made unless it be rendered null and void by a refusal to file it.

The rules with regard to filing set forth in paragraphs 2 and 3 of the present article are applicable to declarations made for the purpose of declining French nationality in conformity with article 8, paragraphs 3 and 4, and articles 12 and 18.

Declarations made either for the purpose of claiming or of declining French nationality must, after filing, be inserted in the Bulletin of Laws. However, the omission of this formality can not prejudice the rights of declarants.

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If a person claiming French nationality is less than 21 years of age completed, the declaration shall be made in his name by his father; if the father be dead, by the mother; if both the father and mother are dead or are excluded from guardianship, or in the cases contemplated by articles 141, 142, and 143 of the Civil Code, by the guardian authorized by a decision of the family council.

He also becomes French if, having been included in the recruiting list, he takes part in the recruiting operations without objecting on the grounds of being a foreigner.

The present law, having been debated and adopted by the Senate and the Chamber of Deputies, shall be enforced as a law of the nation.

Done at Marly-le-Roi, July 22, 1893.

CARNOT.

E. GUÉRIN,
Custodian of the Seals, Minister of Justice.

COLONIES.

NO. 32628. DECREE DETERMINING THE CONDITIONS UNDER WHICH THE PROVISIONS OF THE LAW OF JUNE 26, 1889, ON NATIONALITY ARE APPLICABLE TO THE COLONIES, EXCEPT GUADELOUPE, LA MARTINIQUE, AND LA RÉUNION, OF FEBRUARY 7, 1897.[a]

[Translation.]

Promulgated in the *Journal officiel* of February 10, 1897.

The President of the French Republic.

On the report of the minister of the colonies and of the guardian of the seals, minister of justice.

In view of article 18 of the senatus-consultus of May 3, 1854.

In view of article 7 of the decree of May 25, 1881, regarding the naturalization of foreigners in Cochin China.

In view of the decree of November 10, 1882, regarding the naturalization of the foreigners residing in New Caledonia.

In view of the law of June 26, 1889, on nationality, and especially of article 5, reading as follows:

For the execution of the present law, a set of public administrative regulations shall determine:

1. The conditions under which these provisions are applicable to the colonies except those mentioned in article 2 hereinabove, as well as the formalities to the observed in granting naturalization in the colonies.

In view of the decree of August 13, 1889, promulgating regulations of public administration for the execution of the law of June 26, 1889, on nationality.

In view of the law of July 22, 1893, modifying article 8, section 3, and article 9 of the Civil Code, relating to the declarations made with a view to acquiring or declining French nationality.

The council of state having been heard decrees:

TITLE I.—*Acquisition, loss, and recovery of French nationality in the colonies other than Guadeloupe, La Martinique, and La Réunion.*

ART. 1. Articles 7, 8, 9, 10, 12, 17, 18, 19, 20, and 21 of the Civil Code are hereby declared applicable to the colonies, except Guadeloupe, La Martinique, and La Réunion, under the following conditions:

ART. 7. The exercise of civil rights is independent of the exercise of

[a] 54 Bulletin des Lois, 1394.

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political rights, which are acquired and retained in accordance with the constitutional and electoral laws.

ART. 8. Every Frenchman shall enjoy civil rights.

The following are Frenchmen:

1. Every person born of a Frenchman in France, in the colonies, or abroad.

A natural child whose filiation is established during minority, either by recognition or judgment, follows the nationality of the parent in regard to whom the proof has first been established. If the filiation is established with regard to the father or the mother by the same act or judgment, the child shall follow the nationality of the father.

2. Every person born in the colonies of parents who are unknown or whose nationality is unknown.

3. Naturalized foreigners.

The following may be naturalized:

1. Foreigners who can prove three years' uninterrupted residence in the colonies.

Sojourn in foreign countries in the discharge of an office conferred by the French Government is equivalent to such residence.

2. Foreigners, after one year's residence, provided they have rendered important services to France or her colonies, have come there possessing distinguished talents or have introduced there an industry or useful inventions, or have created industrial or other establishments, or agricultural enterprises, or have been connected in any manner with the military service in the French colonies or protectorates.

3. A foreigner, after one year's residence, if he has married a French woman.

Applications for naturalization are decided on by decree after an investigation has been made into the moral character of the foreigner.

ART. 9. Every person born in the colonies of a foreigner and who resides there may, upon making application within a year after attaining his majority, be naturalized by decree without any other requisites.

ART. 10. Every person born in France, in the colonies, or abroad of parents one of whom has lost French nationality and who resides in the colonies may be naturalized by decree at any age.

ART. 12. A foreign woman who has married a Frenchman shall follow the status of her husband.

A woman married to a foreigner who becomes naturalized as a Frenchman, and the children of legal age of a naturalized foreigner, may, upon application, acquire French nationality without any other requisite by virtue of the decree which confers such nationality on the husband, father, or mother.

The minor children of a surviving father or mother who becomes naturalized as French, become French unless, within a year following the attainment of their majority as regulated by the French law, they decline such nationality in accordance with the provisions of article 12 of the present decree.

ART. 17. The following lose French nationality:

1. Frenchmen naturalized abroad and those who acquire foreign nationality by virtue of the law at their request.

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If such persons are still subject to the obligations of military service in the active army, naturalization shall not work loss of French nationality unless authorized by the French Government.

2. Frenchmen who have declined French nationality in the cases contemplated in articles 12 and 18.

3. Frenchmen who, having accepted public office conferred by a foreign government, continue to hold it in spite of an injunction by the French Government to resign it within a fixed period.

4. Frenchmen who enter the military service of a foreign country without the consent of the Government, without prejudice to the penal laws against Frenchmen who shirk the obligations of the military law.

ART. 18. A Frenchman who has lost French nationality may recover it by securing his reinstatement by decree, provided he resides in France or the French colonies.

French nationality may be granted by the same decree to the wife and the children who are of age, if they so request.

The minor children of a father or mother reinstated become French unless they decline such nationality within a year after the attainment of their majority, in conformity with the provisions of article 12 of the present decree.

ART. 19. A French woman who marries a foreigner follows the status of her husband unless her marriage does not confer upon her the nationality of her husband, in which case she remains French.

If her marriage is dissolved by the death of the husband or by divorce, she recovers French nationality by consent of the Government provided she resides in France or the colonies or returns thither and declares her intention of residing there.

In case the marriage is dissolved by the death of the husband, French nationality may be conferred upon the minor children by the same decree of reinstatement, at the request of the mother, or by a subsequent decree if the request is made by the guardian with the approval of the family council.

ART. 20. Persons who acquire French nationality in the cases contemplated in articles 18 and 19 can only avail themselves thereof with regard to rights accruing to them after that time.

ART. 21. Frenchmen who enter foreign military service without the consent of the Government can not return to France or the colonies without permission granted by decree, and can not recover French nationality except by fulfilling the conditions imposed on foreigners in order to acquire ordinary naturalization.

2. A naturalized foreigner enjoys all the civil and political rights attached to French citizenship. Nevertheless, he is not eligible to the legislative assemblies until ten years after the decree of naturalization, unless this period is shortened by a special law. The period may be reduced to one year.

Frenchmen who recover French nationality after having lost it acquire immediately all civil and political rights, including eligibility to the legislative assemblies.

3. The descendants of the families who were proscribed at the time of the revocation of the edict of Nantes shall continue to benefit by the provisions of the law of December 15, 1790, but on condition that a special decree be issued for each applicant. This decree shall take effect only for the future.

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4. The naturalization of foreigners and the restoration of French nationality shall give rise to the collection of a fee of 100 francs for affixing the seal. This fee shall go to the benefit of the colony.

A total or partial remission of this fee may be granted by decree of the President of the Republic at the proposal of the minister of the colonies and the minister of justice.

TITLE II.—*Formalities to be observed in order to acquire or renounce French nationality in the colonies, except Guadeloupe, La Martinique, and La Réunion.*

5. A foreigner who desires to become naturalized in the colonies should present an application, accompanied by his birth certificate, an extract of the court record relating to him, and, if married, his marriage certificate and the birth certificates of his minor children, with a translation of these documents if they are in a foreign language.

6. A foreigner who requests naturalization after three years' uninterrupted residence in the colony should append to his application documents showing that he actually resides there and has resided there at least three years.

7. A foreigner who has married a French woman should, if he desires to become naturalized after one year's residence, produce the birth certificate of his wife as well as that of her father, if the latter document is necessary in order to prove her French origin.

8. A foreigner who requests naturalization under the conditions contemplated by article 10 of the Civil Code as modified by the present decree should produce birth or marriage certificates of that one of his parents who possessed French nationality, and of his grandfather in the same line, as well as the documents which certify to the loss of such nationality.

9. If the interested party is unable to procure the documents relative to the civil status which are required to be produced by the present decree, their place may be supplied by a national act drawn up in the form established by a ministerial decision reached jointly by the minister of the colonies and the guardian of the seals, minister of justice.

10. The wife and minor children of a foreigner who requests to become French, either by naturalization or restoration to former nationality, should, if they desire also to acquire French nationality without condition as to period of residence, by application of articles 12 and 18 of the Civil Code as modified by the present decree, append their application for naturalization to that made by the husband, the father, or the mother.

11. The application for naturalization should be transmitted, together with the corroborative documents, to the mayor of the commune or to the administrative officer of the territory in which the applicant resides.

It is the duty of the mayor or administrative officer to make an investigation as to the previous record and the moral character of the applicant. The result of this investigation is sent, together with the record of the case and the corroborative documents, to the director of the interior or the official performing the duties of such.

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The latter transmits the case, together with his opinion supported by reasons, to the governor of the colony.

The governor, after passing upon the application, transmits it, together with the corroborative documents, to the minister of the colonies.

It is decided upon by the President of the Republic, with the advice of the minister of the colonies and the minister of justice.

12. Signed declarations, made either in order to renounce the right to decline French nationality or in order to relinquish such nationality, are received by the justice of the peace within whose jurisdiction the applicant resides.

They may be made by special and duly authenticated power of attorney.

They shall be drawn up in duplicate.

The applicant shall be accompanied by two witnesses, who shall certify to his identity. He shall produce in support of his declaration his birth certificate, an attestation in due form from his government, showing that he has preserved the nationality of his parents, and a certificate to the effect that he has responded to the call to the colors in conformity with the military law of his country, save the exceptions provided by treaties.

In case of residence abroad the declarations are received by the diplomatic officers or the consuls.

13. The two copies of the declaration and the corroborative documents shall be immediately sent by the justice of the peace to the attorney-general of the Republic. The latter shall transmit them without delay, through the governor, to the minister of the colonies, who shall forward them to the minister of justice.

The declaration shall be recorded at the chancelry on a special register. One of the copies, together with the corroborative documents, shall be filed among the archives, while the other copy is sent to the interested party with a memorandum of the registration.

The recorded declaration shall bear the date of the day on which it was received by the authority before which it was made.

14. The declaration must be recorded in the ministry of justice under penalty of being void.

The recording shall be refused if it is found from the documents produced that the declarant does not fulfill the conditions imposed by law, he being entitled to appeal before the civil courts in the manner prescribed by articles 855 et seq. of the Code of Civil Procedure.

The applicant shall, within a year from the date of his declaration, receive a notification of the refusal to record it, accompanied by a statement of the reasons.

Unless the notifications mentioned above are made within the period indicated the minister of justice shall, upon the expiration thereof, deliver to the declarant, at his request, a copy of his declaration, accompanied by a memorandum of registration.

15. The renunciation by a minor of the right which belongs to him, in accordance with articles 12 and 18 of the Civil Code, as modified by the present decree, of declining French nationality within a year after the attainment of his majority, shall be made in his name by his father, or, in case of the latter's death, by his mother; in case of

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the death of both father and mother or of their exclusion from guardianship, or in the cases contemplated by articles 142 and 143 of the Civil Code, or in case the period of paternal authority has expired, it shall be made by the guardian authorized by deliberation of the family council.

These declarations shall be made in the form prescribed by articles 12 et seq. of the present decree. They shall be accompanied by the birth certificate of the minor and by the decree conferring French nationality on his father or mother, as the case may be.

16. Declarations made either for the purpose of renouncing the right to decline French nationality or for the purpose of relinquishing such nationality shall be inserted in the Law Bulletin after being recorded.

Nevertheless, the omission of this formality shall not prejudice the rights of declarants.

No fees for affixing seals shall be collected on these declarations.

TITLE III.—*General provisions.*

17. No change is made in the status of the natives in the French colonies.

18. All provisions contrary to the present regulations are hereby abrogated.

19. The minister of the colonies and the guardian of the seals, minister of justice, are each charged, as far as he is concerned, with the execution of the present decree, which shall be published in the Official Gazette of the French Republic and inserted in the Law Bulletin, as well as in the official bulletin of the ministry of the colonies.

Done at Paris, February 7, 1897.

FÉLIX FAURE.
ANDRÉ LEBON,
Minister of the Colonies.

J. DARLAN,
Guardian of the Seals,
Minister of Justice and Worship.

GERMAN EMPIRE.

Mr. Tower, ambassador to Germany, to Mr. Root, Secretary of State, November 19, 1906.

No. 1061.] EMBASSY OF THE UNITED STATES,
Berlin, November 19, 1906.

SIR: In compliance with the instructions contained in Mr. Bacon's circular dispatch of the 9th of July, 1906, and in reply to a note which I addressed accordingly to the imperial German ministry of foreign affairs, asking for information in regard to the laws of citizenship and the practice of the German Government in protecting its citizens in foreign countries and recognizing their expatriation, I have received to-day from the ministry copies of the laws now in force upon this subject throughout the Empire, which are respectfully inclosed to you herewith, as follows:

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A copy of the "Bundes-Gesetzblatt des Norddeutschen Bundes," No. 20, issued at Berlin on the 23d of June, 1870, which contains on page 355 the law of June 1, 1870, as to acquirement and loss of citizenship in the different Federated States of the North German Confederation. This law, which was enacted only for the territory included within the North German Confederation, was subsequently extended and has effect throughout the whole German Empire; so that its provisions which relate to the North German Confederation, its territory and its citizens, are to be taken to apply to the whole of the territory and citizens of the Empire.

In this it is to be noted, however, that the provisions of article 1, paragraph 2, and of article 8, paragraph 3, and also paragraph 16, which were valid only so long as the North German Confederation existed and were limited to its existence, have now no further force.

It will be seen that under this law the rights of citizenship in Germany are acquired:

1. By inheritance.
2. By legitimation.
3. By marriage.
4. By adoption.
5. In the case of a foreigner, by naturalization.

By birth, even in the case of children born abroad; legitimate children of a citizen of Germany acquire the nationality of their father; illegitimate children acquire the nationality of the mother.

I inclose also herewith, upon page 604 of the Reichs-Gezetzblatt, issued on the 18th of August, 1906, a copy of a statute which enlarged and amended the provisions of the act above referred to of the 1st of June, 1870.

I also inclose as a further provision relating to citizenship in Germany a copy of the "Bundes-Gesetzblatt des Norddeutschen Bundes," No. 16, published in Berlin on the 20th of April, 1871, containing on page 64 a copy of the constitution of the German Empire; this provision is in paragraph 3.

I also inclose a copy of the "Reichs-Gesetzblatt," No. 32, issued at Berlin on the 22d of December, 1875, which contains on page 324 a further enactment in regard to foreigners in the service of the German Empire.

I inclose further a copy of the "Reichs-Gesetzblatt," No. 40, issued at Berlin on the 13th of September, 1900, which contains on page 812 the provisions relating to the acquirement of citizenship in the German protectorates.

The provisions of the law under which citizenship and nationality are lost in Germany are set forth in paragraphs 1 to 13 of the statutes of the 1st of June, 1870.

German subjects may, under certain circumstances, be released upon petition from their German allegiance. The provisions relating to this subject are to be found in paragraph 13, No. 1, and in paragraphs 14 to 19 of the law of the 1st of June, 1870; but if a German subject has once been released from his allegiance he can acquire his nationality again only through naturalization.

Germans who have lived abroad for ten years without interruption shall lose their nationality through that fact, unless they take steps to preserve their allegiance under the provisions of the statute. This period of ten years may be reduced by treaty between Germany

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and other states to a period of five years. (Paragraph 21 of the statute of the 1st of June, 1870.)

Reacquirement of nationality so lost is provided for in sections 4 and 5 of paragraph 21 of that statute.

In case of a residence abroad German nationality may be lost also under conditions which are set forth in paragraphs 20 and 22 of the statute of the 1st of June, 1870.

German subjects residing abroad have the right to claim German protection abroad under the provisions of the constitution of the Empire. But the Imperial Government denies its protection to German subjects living abroad in case such subjects have voluntarily acquired citizenship in another country.

I have, etc.,

CHARLEMAGNE TOWER.

[Enclosure.—Translation.]

(NO. 510.) LAW OF JUNE 1, 1870, ON THE ACQUISITION AND LOSS OF CITIZENSHIP IN THE CONFEDERATION AND THE STATES THEREOF.

We, William, by God's grace King of Prussia, etc., order in the name of the North German Confederation, with the consent of the Bundesrath and the Reichstag, as follows:

§ 1.

Citizenship in the Confederation is acquired by virtue of citizenship in one of the States thereof, and ceases with the loss of the latter.

Citizens of the Grand Duchy of Hesse possess citizenship in the Confederation only when they are domiciled in those parts of the grand duch which belong to the Confederation.

§ 2.

Citizenship in one of the States of the Confederation shall hereafter be only—

(1) By descent (§ 3);
(2) By legitimation (§ 4);
(3) By marriage (§ 5);
(4) In case of a North German, by admission; and
(5) In case of a foreigner, by naturalization (§ 6 et seq.).

Adoption does not have this effect of itself.

§ 3.

The legitimate children of a North German acquire the citizenship of the father by birth, even when they are born abroad, and the illegitimate children of a North German woman acquire the citizenship of the mother by birth, even though they be born abroad.

§ 4.

If the father of an illegitimate child is a North German and the mother does not possess the citizenship of the father, the child acquires the citizenship of the father by being legitimated according to the law.

§ 5.

Marriage with a North German confers the citizenship of the husband on the wife.

§ 6.

Both admission and naturalization (§ 2, Nos. 4 and 5) are granted by means of a certificate drawn up by the proper administrative authority.

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§ 7.

The certificate of admission shall be granted to every citizen of another State of the Confederation who applies therefor and proves that he has settled in the State in which he desires admission, unless there are reasons, according to §§ 2 to 5 of the law of November 1, 1867, concerning the right to change residence (Federal Law Bulletin, p. 55), which justify the rejection of a new settler or the refusal to permit a continuance of residence.

§ 8.

A certificate of naturalization shall be granted to foreigners only when they (1) are capable of managing their own affairs according to the laws of their former domicile, unless the deficiency in this regard is supplied by the consent of the father, the guardian, or the curator of the applicant; (2) have led an irreproachable life; (3) find a residence of their own or some place of shelter in the locality where they wish to settle; (4) are able to support themselves and those dependent on them in such locality according to the conditions prevailing there.

Before granting a certificate of naturalization the higher administrative authority shall receive a report from the municipality and the poor board of the place where the applicant wishes to reside relative to the requirements under Nos. 2, 3, and 4.

Citizens of the Kingdoms of Bavaria and Württemberg and of the Grand Duchy of Baden shall, in case of reciprocity, be required, before they become naturalized, to furnish proof that they have complied with the military obligations of their former country or have been released therefrom.

§ 9.

A commission issued or confirmed by the Government or by a central or higher administrative authority to a foreigner or citizen of another State of the Confederation who has been employed in the direct or indirect Government service or in the church, school, or municipal service shall supply the place of a naturalization certificate or certificate of admission unless a reservation to the contrary is contained in the commission.

If a foreigner has been appointed to a position in the service of the Confederation he acquires citizenship in that State of the Confederation in which he has his official residence.

§ 10.

A certificate of naturalization or admission confers all the rights and obligations of citizenship from the date of its issue.

§ 11.

A grant of citizenship shall, unless exception is made, also extend to the wife and the minor children who are still under the paternal authority.

§ 12.

Residence in a State of the Confederation does not of itself confer citizenship.

§ 13.

Citizenship shall henceforth be lost only: (1) By release upon application (§§ 14 et seq.); (2) by decision of the authorities (§§ 20 and 22); (3) by ten years' residence abroad (§ 21); (4) in the case of illegitimate children, by legitimation in accordance with the provisions of the law, provided the father belongs to a different State than the mother; (5) in the case of a North German, by marriage with a citizen of another State of the Confederation or with a foreigner.

§ 14.

Release shall be granted by means of a certificate of release issued by the higher administrative authority of the native State.

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§ 15.

Release shall be granted to every citizen who proves that he has acquired citizenship in another State of the Confederation.

In the absence of such proof it shall not be granted—

(1) To persons liable to military duty who are between 17 and 25 years of age until they have produced a certificate of the district recruiting board showing that they are not seeking the release for the sole purpose of evading military duty in the standing army or in the navy;

(2) To military persons belonging to the standing army or the navy, to officers of the furloughed class, and to officials, until they have been discharged from the service;

(3) To persons belonging to the reserve of the standing army and the landwehr, as well as to the reserve of the navy and to the seewehr, and not appointed as officers, after they have been called into active service.

§ 16.

North Germans who wish to emigrate to the Kingdom of Bavaria, the Kingdom of Württemberg, or the Grandduchy of Baden, or to those parts of the Grandduchy of Hesse which do not belong to the Confederation, shall be refused release, in case of reciprocity, as long as they fail to prove that the State in question is willing to admit them.

§ 17.

Release shall not be refused in times of peace for any other reasons than those indicated in §§ 15 and 16. In times of war or danger of war the right is reserved to the presidency of the Confederation to issue special orders.

§ 18.

A certificate of release involves loss of citizenship from the date of its issue.

The release becomes ineffective if the person released does not transfer his residence outside of the territory of the Confederation within six months from the day of issue, or if he does not acquire citizenship in another State of the Confederation.

§ 19.

The release extends also to the wife and to the minor children who are still under the paternal authority, unless an exception is made therein.

§ 20.

North Germans residing abroad may be declared to have lost their citizenship by resolution of the central authority of their native State if, in case of war or danger of war, they fail to obey an express summons, issued by the presidency of the Confederation for the whole territory of the Confederation, to return within a given period.

§ 21.

North Germans who leave the territory of the Confederation and reside abroad ten years uninterruptedly lose their citizenship thereby. The aforementioned period is to be calculated from the date of leaving the territory of the Confederation, or, if the emigrant is in possession of a passport or certificate of nativity, from the time of the expiration of these papers. The period is interrupted by registration in the register of a consulate of the Confederation. It begins anew from the day following cancellation from the register.

Loss of citizenship incurred according to this provision extends also to the wife and to the minor children who are under the paternal authority, provided they are with the husband or father.

In the case of North Germans who reside at least five years uninterruptedly in a foreign nation and acquire citizenship therein, the ten-year period may be reduced to five years by treaty, regardless of whether the interested party possesses a passport or certificate of nativity or not.

North Germans who have lost their citizenship by a ten years' residence abroad and have acquired no other citizenship may recover their citizenship in their former native State even without settling there.

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North Germans who have lost their citizenship by a ten years' residence abroad and then return to the territory of the North German Confederation, acquire citizenship in that State of the Confederation in which they settle by means of a certificate of admission issued by the higher administrative authority. This certificate must be issued to them on their request.

§ 22.

If a North German enters the service of a foreign state without the permission of his Government, the central authority of his native State may by resolution declare him to have forfeited his citizenship, provided he fails to obey an express summons to leave such service within the period expressed therein.

§ 23.

If a North German serves a foreign power with the permission of his Government, he retains his citizenship.

§ 24.

The issue of certificates of admission and of certificates of discharge in the cases contemplated in § 15, subdivision 1, shall be free of charge.

For the issue of discharge certificates in other cases than those indicated in § 15, subdivision 1, the amount of stamp taxes and issuance fees shall not exceed one dollar.

§ 25.

With regard to the citizens of those States of the Confederation according to whose laws citizenship was lost by a residence abroad of ten years or longer, and who are residing abroad at the time this law is enacted, the period in question shall not be interrupted by this law.

With regard to the citizens of the remaining States of the Confederation the period mentioned in § 21 shall begin on the day this law goes into effect.

§ 26.

All provisions contrary to this law are hereby repealed.

§ 27.

This law shall go into force on January 1, 1871.

In witness whereof we have hereunto set our own signature and affixed the seal of the Confederation.

Given at Babelsberg Castle, June 1, 1870.

[L. S.] WILLIAM.
COUNT VON BISMARCK-SCHÖNHAUSEN.

[Enclosure.—Translation.]

(No. 2322.) LAWS OF AUGUST 18, 1896, FOR THE INTRODUCTION OF THE CIVIL CODE.

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ARTICLE 41.

The law on the acquisition and loss of citizenship in the Confederation and the States, of June 1, 1870 (Federal Law Bulletin, p. 355), is hereby modified as follows:

I. The following provisions are substituted for § 11:

"A grant of citizenship shall, unless exception is made, extend at the same time to the wife and to the minor children who are legally represented, by virtue of parental authority, by the person admitted or naturalized. Daughters who are or have been married are excepted."

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II. The following provisions shall be inserted as § 14a:

"The release of a citizen who is under parental authority or guardianship can be demanded by the legal representative only with the approval of the guardianship court.

"The approval of the guardianship court is not necessary if the father or the mother demand the release for themselves and at the same time for a child by virtue of parental authority. If the sphere of action of a counsel appointed for the mother extends to the care of the person of the child, the mother shall in such case require the approval of the counsel in demanding the release of the child."

III. The following provisions take the place of § 19:

"The release shall, unless an exception is made, extend at the same time to the wife and to those children who are legally represented by the person released by virtue of parental authority.

"This provision shall not apply to daughters who are or have been married, nor to children who are under the parental authority of the mother, in case the mother requires the approval of the counsel according to § 14, par. 2, second sentence, in order to demand the release of the children."

IV. The following provisions are substituted in lieu of § 21, par. 2:

"Loss of citizenship incurred according to this provision extends at the same time to the wife and to those children who are legally represented by the person losing his citizenship by virtue of parental authority. Daughters who are or have been married are excepted."

* * * * * * *

[Enclosure.—Translation.]

CONSTITUTION.

* * * * * * *

ARTICLE 3.

There exists for all Germany a common right of nativity, the effect of which is that a citizen or subject of any State of the Confederation shall be treated as a native in all other States of the Confederation and shall therefore be permitted to establish his permenent residence there, carry on industriy, hold public office, acquire real estate, acquire the rights of citizenship, and enjoy all other civil rights on the same conditions as the native-born inhabitants, being treated on an equal footing with them also in matters relating to judicial prosecution and the protection of the law.

No German shall be restricted in the exercise of this right by the authorities of his native State or by those of any other State of the Confederation.

The provisions regarding the maintenance of paupers and admission into local pauper unions are not affected by the principle set forth in the first paragraph.

The treaties existing among the several States of the Confederation with regard to the taking over of exiles, the care of sick, and the burial of deceased citizens shall also remain in force until further modified.

With regard to the fulfillment of the military obligations toward the native State the necessary provisions shall be established in the laws of the Empire.

All Germans are equally entitled to the protection of the Empire as against foreign countries.

* * * * * * *

[Enclosure.—Translation.]

(NO. 1095.) LAW OF DECEMBER 20, 1875, ON THE NATURALIZATION OF FOREIGNERS EMPLOYED IN THE SERVICE OF THE EMPIRE.

We, William, by God's grace German Emperor, King of Prussia, etc., hereby decree the following in the name of the German Empire, with the consent of the Bundesrath and the Reichstag:

Foreigners who are employed in the service of the Empire, draw a salary from the imperial treasury, and have their official residences abroad shall not

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be refused a certificate of naturalization by the State of the Confederation in which they request the grant of citizenship.

In witness whereof we have hereunto set our own signature and affixed the imperial seal.

Given at Berlin, December 20, 1875.

[L. S.] WILLIAM.
PRINCE VON BISMARCK.

[Enclosure.—Translation.]

LAW ON THE PROTECTORATES, AS PROMULGATED SEPTEMBER 10, 1900.

* * * * * * *

§ 9.

Foreigners who settle in the protectorates, as well as natives, may be naturalized by the imperial chancellor as citizens of the Empire. The imperial chancellor is empowered to delegate this authority to other imperial officials.

With regard to naturalization and the rights of citizenship in the Empire consequent thereon, the provisions of the law on the acquisition and loss of citizenship in the Confederation and the States thereof of June 1, 1870 (Federal Law Bulletin, p. 355; Imperial Law Bulletin, 1896, p. 615), as well as art. 3 of the imperial constitution and § 4 of the law on election to the German Reichstag of May 31, 1869 (Federal Law Bulletin, p. 145), are applicable according to circumstances.

Within the meaning of § 21 of the law mentioned, and in the application of the law doing away with double taxation of May 13, 1870 (Federal Law Bulletin, p. 119), the protectorates are considered as part of Germany.

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GREAT BRITAIN AND CERTAIN COLONIES AND POSSESSIONS.

[Enclosure in despatch from Mr. Reid, ambassador to Great Britain, No. 240, August 15, 1906.]

AN ACT TO AMEND THE LAW RELATING TO THE LEGAL CONDITION OF ALIENS AND BRITISH SUBJECTS.

[12TH MAY, 1870.]

Whereas it is expedient to amend the law relating to the legal conditions of aliens and British subjects:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purpqses as "The naturalization act, 1870."

STATUS OF ALIENS IN THE UNITED KINGDOM.

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject, and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: *Provided—*

(1) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall

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not qualify an alien for any office or for any municipal, parliamentary, or other franchise;

(2) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him;

(3) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this act, or in pursuance of any devolution by law on the death of any person dying before the passing of this act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by order in council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such order in council, any person, being originally a subject or citizen of the state referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien and as a subject of the state to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows, that is to say: If the declarant be in the United Kingdom, in the presence of any justice of the peace; if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

5. From and after the passing of this act an alien shall not be entitled to be tried by a jury de medietate linguæ, but shall be triable in the same manner as if he were a natural-born subject.

EXPATRIATION.

6. Any British subject who has at any time before, or may at any time after the passing of this act, when in any foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized

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in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien: Provided—

(1) That where any British subject has before the passing of this act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may at any time within two years after the passing of this act make a declaration that he is desirous of remaining a British subject, and upon such declaration hereinafter referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect.

(2) A declaration of British nationality may be made and the oath of allegiance be taken as follows, that is to say: If the declarant be in the United Kingdom, in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

7. An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's principal secretaries of state, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intended when naturalized either to reside in the United Kingdom or to serve under the Crown, may apply to one of Her Majesty's principal secretaries of state for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service and intention to reside or serve as such secretary of state may require. The said secretary of state, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect.

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The said secretary of state may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this act may apply to the secretary of state for a certificate of naturalization under this act, and it shall be lawful for the said secretary of state to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

8. A natural-born British subject who has become an alien in pursuance of this act and is in this act referred to as a statutory alien may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's principal secretaries of state for a certificate, hereinafter referred to as a certificate of readmission to British nationality, readmitting him to the status of a British subject. The said secretary of state shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of readmission to British nationality has been granted shall, from the date of the certificate of readmission, but not in respect of any previous transaction, resume his position as a British subject, with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this act conferred on the secretary of state in the United Kingdom in respect of the grant of a certificate of readmission to British nationality in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

9. The oath in this act referred to as the oath of allegiance shall be in the form following, that is to say:

"I, ——— ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."

NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

10. The following enactments shall be made with respect to the national status of women and children:

(1) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.

(2) A widow, being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a

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statutory alien and may as such at any time during widowhood obtain a certificate of readmission to British nationality in manner provided by this act.

(3) Where the father, being a British subject, or the mother, being a British subject and a widow, becomes an alien in pursuance of this act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject and not a British subject.

(4) Where the father or the mother, being a widow, has obtained a certificate of readmission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother shall be deemed to have resumed the position of a British subject to all intents.

(5) Where the father, or the mother, being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom shall be deemed to be a naturalized British subject.[a]

SUPPLEMENTAL PROVISIONS.

11. One of Her Majesty's principal secretaries of state may by regulation provide for the following matters:

(1) The form and registration of declarations of British nationality;

(2) The form and registration of certificates of naturalization in the United Kingdom;

(3) The form and registration of certificates of readmission to British nationality;

(4) The form and registration of declarations of alienage;

(5) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations;

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[a] [An act to amend the naturalization act, 1870, so far as respects children of naturalized British subjects in the service of the Crown resident out of the United Kingdom. [6th July, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) The residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom, shall have, and be deemed always to have had, the same effect, for the purpose of subsection five of section ten of the naturalization act, 1870, as residence with such father in the United Kingdom.

(2) Subsection five of section ten of the naturalization act, 1870, shall have effect as if the words "or with such father while in the service of the Crown out of the United Kingdom" had been inserted therein after the words "part of the United Kingdom," and every copy of the naturalization act, 1870, hereafter printed may be printed accordingly.

2. This act may be cited as the naturalization act, 1895.—58 and 59 Vict., ch. 43.]

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(6) The transmission to the United Kingdom for the purpose of registration or safe-keeping, or of being produced as evidence, of any declarations or certificates made in pursuance of this act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this act;

(7) With the consent of the treasury, the imposition and application of fees in respect of any registration authorized to be made by this act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this act.

The said secretary of state, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said secretary of state in pursuance of this section shall be deemed to be within the powers conferred by this act and shall be of the same force as if it had been enacted in this act, but shall not, so far as respects the imposition of fees, be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. The following regulations shall be made with respect to evidence under this act.

(1) Any declaration authorized to be made under this act may be proved in any legal proceeding by the production of the original declaration or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned.

(2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such certificate.

(3) A copy of readmission to British nationality may be proved in any legal proceeding by the production of the original certificate or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such certificate.

(4) Entries in any register authorized to be made in pursuance of this act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's principal secretaries of state, and the copies of such entries shall be evidence of any matters by this act or by any regulation of the said secretary of state authorized to be inserted in the register.

(5) The documentary evidence act, 1868, shall apply to any regulation made by a secretary of state in pursuance of or for the purpose of carrying into effect any of the provisions of this act.

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MISCELLANEOUS.

13. Nothing in this act contained shall affect the grant of letters of denization by Her Majesty.

14. Nothing in this act contained shall qualify an alien to be the owner of a British ship.

15. Where any British subject has, in pursuance of this act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

17. In this act, if not inconsistent with the context or subject-matter thereof—

"Disability" shall mean the status of being an infant, lunatic, idiot, or married woman;

"British possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this act;

"The governor of any British possession" shall include any person exercising the chief authority in such possession;

"Officer in the diplomatic service of Her Majesty" shall mean any ambassador, minister, or chargé d'affaires or secretary of legation, or any person appointed by such ambassador, minister, chargé d'affaires, or secretary of legation to execute any duties imposed by this act on an officer in the diplomatic service of Her Majesty;

"Officer in the consular service of Her Majesty" shall mean and include consul-general, consul, vice-consul, and consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul, and consular agent.

REPEAL OF ACTS MENTIONED IN SCHEDULE.[a]

18. The several acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided, that the repeal enacted in this act shall not affect—

(1) Any right acquired or thing done before the passing of this act;

(2) Any liability accruing before the passing of this act;

(3) Any penalty, forfeiture, or other punishment incurred or to

[a Section 18 and schedule were repealed by the act of August 25, 1883, "for further promoting the revision of the statute law by repealing certain enactments which have ceased to be in force or have become unnecessary." 46 & 47 Vict., ch. 39.]

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be incurred in respect of any offense committed before the passing of this act;

(4) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment, as aforesaid.

SCHEDULE.

[NOTE.—Reference is made to the repeal of the "whole act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous acts. This schedule, so far as respects acts prior to the reign of George the Second, other than acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intituled "The Statutes of the Realm; printed by command of His Majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts."]

PART I.—*Acts wholly repealed, other than acts of the Irish Parliament.*

Date.	Title.
7 Jas. 1, c. 2	An act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance and the oath of supremacy.
11 Will. 3, c. 6[a]	An act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.
13 Geo. 2, c. 7	An act for naturalizing such foreign Protestants and others therein mentioned as are settled or shall settle in any of His Majesty's colonies in America.
20 Geo. 2, c. 44	An act to extend the provisions of an act made in the thirteenth year of His present Majesty's reign, intituled "An act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath."
13 Geo. 3, c. 25	An act to explain two acts of Parliament, one of the thirteenth year of the reign of His late Majesty, "for naturalizing such foreign Protestants and others as are settled or shall settle in any of His Majesty's colonies in America," and the other of the second year of the reign of His present Majesty, "for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's royal American regiment, or as engineers in America.
14 Geo. 3, c. 84	An act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3, c. 52	An act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.
6 Geo. 4, c. 67	An act to alter and amend an act passed in the seventh year of the reign of His Majesty King James the First, intituled "An act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper and the oath of allegiance and the oath of supremacy."
7 and 8 Vict., c. 66	An act to amend the laws relating to aliens.
10 and 11 Vict., c. 83	An act for the naturalization of aliens.

[a] 11 & 12 Wm. 3 (Ruff.).

PART II.—*Acts of the Irish Parliament wholly repealed.*

Date.	Title.
14 and 15 Chas. 2, c. 13	An act for encouraging Protestant strangers and others to inhabit and plant in the kingdom of Ireland.
2 Anne, c. 14	An act for naturalizing of all Protestant strangers in this kingdom.
19 and 20 Geo. 3, c. 29	An act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 and 24 Geo. 3, c. 38	An act for extending the provisions of an act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom."
26 Geo. 3, c. 48	An act to explain and amend an act intituled "An act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others who shall settle in this kingdom."

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PART III.—*Acts partially repealed.*

Date.	Title.	Extent of repeal.
4 Geo. 1, c. 9 (act of Irish Parliament.)	An act for reviving, continuing, and amending several statutes made in this Kingdom heretofore temporary.	So far as it makes perpetual the act of 2 Anne, c. 14.
6 Geo. 4, c. 50	An act for consolidating and amending the laws relative to jurors and juries.	The whole of sec. 47.
3 and 4 Will. 4, c. 91 ...	An act consolidating and amending the laws relating to jurors and juries in Ireland.	The whole of sec. 37.

AN ACT TO AMEND THE LAW RELATING TO THE TAKING OF OATHS OF ALLEGIANCE ON NATURALIZATION.[a]

[10TH AUGUST, 1870.]

Whereas it is expedient to amend the law relating to the taking of oaths of allegiance under the naturalization act, 1870:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The power of making regulations vested in one of Her Majesty's principal secretaries of state by the naturalization act, 1870, shall extend to prescribing, as follows:

(1) The persons by whom the oaths of allegiance may be administered under that act.

(2) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested.

(3) The registration of such oaths.

(4) The persons by whom certified copies of such oaths may be given.

(5) The transmission to the United Kingdom for the purpose of registration or safe-keeping or of being produced as evidence of any oaths taken in pursuance of the said act out of the United Kingdom, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of the United Kingdom in pursuance of this act.

(6) The proof in any legal proceeding of such oaths.

(7) With the consent of the treasury, the imposition and application of fees in respect of the administration or registration of any such oath.

The two last paragraphs in the eleventh section of the naturalization act, 1870, shall apply to regulations made under this act.

2. Any person wilfully and corruptly making or subscribing any declaration under the naturalization act, 1870, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labour for any term not exceeding twelve months.

3. This act shall be termed the naturalization oath act, 1870, and shall be construed as one with the naturalization act, 1870, and may be cited together with that act as the naturalization acts, 1870.

[a] 33 and 34 Vict., chap. 102.

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AN ACT FOR AMENDING THE LAW IN CERTAIN CASES IN RELATION TO NATURALIZATION.[a]

[25th JULY 1872.]

Whereas by a convention between Her Majesty and the United States of America, supplementary to the convention of the thirteenth day of May, one thousand eight hundred and seventy, respecting naturalization, and signed at Washington on the twenty-third day of February, one thousand eight hundred and seventy-one, and a copy of which is contained in the schedule to this act, provision is made in relation to the renunciation by the citizens and subjects therein mentioned of naturalization or nationality in the presence of the officers therein mentioned:

And whereas doubts are entertained whether such provisions are altogether in accordance with the naturalization act, 1870;

And whereas other doubts have arisen with respect to the effect of "the naturalization act, 1870," on the rights of women married before the passing of that act, and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as the naturalization act, 1872, and this act and "the naturalization act, 1870," may be cited together as "the naturalization acts, 1870 and 1872."

2. Any renunciation of naturalization or of nationality made in manner provided by the said supplementary convention by the persons and under the circumstances in the said convention in that behalf mentioned shall be valid to all intents, and shall be deemed to be authorized by the said naturalization act, 1870. This section shall be deemed to take effect from the date at which the said supplementary convention took effect.

3. Nothing contained in "the naturalization act, 1870," shall deprive any married woman of any estate or interest in real or personal property to which she may have become entitled previously to the passing of that act, or affect such estate or interest to her prejudice.

SCHEDULE.

[Here follows the text of the convention, signed February 23, 1871, between Her Majesty and the United States supplementary to the convention of May 13, 1870, respecting naturalization.]

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[a] 35 and 36 Vict., ch. 39.

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[Enclosure* despatch from Mr. Reid, ambassador to Great Britain, No. 240, August 15, 1906.—Extract.]

REPORT OF THE INTERDEPARTMENTAL COMMITTEE APPOINTED BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT TO CONSIDER THE DOUBTS AND DIFFICULTIES WHICH HAVE ARISEN IN CONNECTION WITH THE INTERPRETATION AND ADMINISTRATION OF THE ACTS RELATING TO NATURALIZATION, AND TO ADVISE WHAT AMENDMENT, IF ANY, OF THE LAW IS DESIRABLE.

To the Right Hon. Charles Thomson Ritchie, M. P., His Majesty's principal secretary of state for the home department.

24TH JULY, 1901.

SIR: 1. On the 9th February, 1899, your predecessor in office, Secretary Sir Matthew White Ridley, commissioned us to report to him upon the doubts and difficulties which have arisen in connection with the interpretation and administration of the acts relating to naturalization, and to advise whether legislation for the amending of these acts is desirable; and if so, what scope and direction such legislation should take. We have now the honor to report to you the result of our inquiry.

In dealing with the subject referred to us we have had to consider two distinct questions, how far the existing law requires elucidation and in what respects and to what extent it requires amendment and extension. On the first point—the doubts as to the interpretation of the present law—we have been at a certain disadvantage, inasmuch as the subject of nationality, though of great importance, is one which, as it happens, is rarely brought before the courts, and consequently there is but little assistance to be obtained from judicial decisions. Questions, however, frequently arise in one form or another in the administration of the affairs—domestic, foreign, colonial, or Indian—of the executive government. We have had before us the records of the various matters relating to the subject which, during the last thirty years or more, have been considered by one or other of the following public departments, viz, the home, foreign, colonial, war, and Indian offices, and the Admiralty, board of trade, and the civil-service commission. We have also had the advantage of the able assistance of Sir T. Godfrey Carey (bailiff of Guernsey), Mr. W. H. Venables Vernon (bailiff of Jersey), and Mr. George A. Ring (attorney-general of the Isle of Man) on the questions specially affecting their respective provinces, and Professor Westlake, K. C., and Prof. A. V. Dicey, K. C., who have been good enough to give us their valuable counsel on certain points on which we thought it desirable to consult them. Further, we have had before us the various laws in force in the different parts of His Majesty's dominions regulating the conditions requisite for conferring upon aliens the rights of British subjects within the limits of the territories governed by such laws; also the report of the select committee which considered the subject in 1843, and the report of the royal commission which dealt with it in 1869, both of which reports, together with their appendices, contain much material which is still of practical importance.

* Parliamentary Paper, 1901, Cd. 723.

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2. The law relating to naturalization is concerned mainly with the conditions under which the rights, privileges, and duties constituting the status of a British subject are acquired and lost. Persons are either invested with that status at the moment of birth, or subsequently acquire it under the operation of statute law. The rights and privileges which constitute the status of a British subject are mainly the political rights and the capacities for the acquisition and holding of property mentioned later in this report; and, what are perhaps of still greater practical importance, those personal rights and privileges which a British subject carries with him into foreign countries. The principal of these are (1) the privilege of protection, subject to any paramount obligation which he may be under to any other state of which he is also a subject or citizen; (2) the right and liability to become a party to proceedings in British consular courts established under the foreign jurisdiction act, 1890 (53 and 54 Vict., c. 37); (3) the right to be married in foreign countries under the provisions of the foreign marriage act, 1892 (55 and 56 Vict., c. 23). On the other hand, there are special liabilities imposed on British subjects for acts committed in foreign countries. A British subject is amenable to British courts for treason (35 Hen. VIII, c. 2), for murder or manslaughter committed in a foreign country (24 and 25 Vict., c. 100, s. 9), and for bigamy (24 and 25 Vict., c. 100, s. 5). The law is the same with regard to certain offences under the merchant shipping act, 1894 (57 and 58 Vict., c. 60), and the explosive substances act (46 and 47 Vict., c. 3, s. 3). In some parts of His Majesty's dominions, especially in British India, the liability of a British subject for offences committed outside the limits of the possession is much more extensive. There are also contained in most treaties of extradition special provisions affecting the surrender of the subjects of the country from which the surrender is demanded.

3. Upon naturalization an alien becomes, speaking generally, invested with all the rights and capacities, and subject to all the obligations and liabilities of a British subject. Some differences, however, still exist between the status of a naturalized and of a natural-born subject, the more important of which will be noticed in the course of this report. We think that as far as possible these differences should be abolished.

4. The above brief indication of the rights and privileges acquired by, and the duties and obligations imposed upon, an alien by his naturalization as a British subject is enough to show the expediency of avoiding as far as possible the occurrence of cases of double nationality, or, in other words, of endeavouring as far as possible to bring about that a person who acquires British nationality shall thereupon cease to be the subject of the country to which he previously belonged. Our law makes provision for the case of a British subject becoming a subject of a foreign state by his own act. This will be dealt with later in this report. But it is obviously impossible for our law to provide that a person on becoming a British subject shall cease to be the subject of any foreign state. Whether or not naturalization as a British subject is attended with this result must depend upon the law of the country of which the naturalized person was a subject immediately prior to his naturalization.

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The occurrence of cases of double nationality acquired at birth is due mainly to the fundamental difference which exists between those countries whose law is derived mainly from feudal principles, and those countries whose law comes more directly from Roman sources, the former regarding the place of birth as the determining factor in constituting the relation of sovereign and subject, while the latter look to the nationality of the parent, and disregard, more or less, the place of birth. Although the statute law of most countries has introduced certain modifications of each of these principles, the difference springing from the original sources of the system of law still remains. To guard effectively against the occurrence of cases of double nationality would require the assimilation in this respect of all the various systems of law prevailing in civilized communities, an ideal which, however desirable, is not likely to be realized.

It has been strongly urged that in order to bring the law of this country into harmony with that of most other European nations the legislature should abandon the principle that the mere fact of birth within the dominions confers British nationality. With regard to naturalization, something might be done by conventions with other countries to facilitate the abandonment of a claim to retain as subjects persons who become naturalized in the other contracting state. An attempt to pave the way for conventions with other nations was made in the naturalization act, 1870. No effective steps, however, have hitherto been taken in this direction. This subject will be referred to later in this report. It has also been suggested that the secretary of state, in the exercise of his discretion in granting certificates of naturalization, might have regard to the consideration whether or not the applicant would, on becoming a British subject, be divested of his prior nationality. This suggestion is, we think, worthy of attention, though we recognize that there would be serious practical difficulties in giving general effect to it. We do not think there should be any interference by legislation with the absolute discretion of the secretary of state.

5. Leaving these general considerations, we proceed to state briefly the present state of the law of this country whereby the rights and duties of a British subject are acquired and lost. That law consists partly of common law and partly of statute law. To the common law belongs the fundamental principle that any person who is born within His Majesty's dominions is from the moment of his birth a British subject, whatever may be the nationality of either or both of his parents, and however temporary and casual the circumstances determining the locality of his birth may have been.

6. The common law regarded the status thus acquired as indelible. "*Nemo potest exuere patriam*" was the rule of the common law. The act of 1870 altered this rule by providing means for terminating in certain cases and under certain conditions the status of a British subject. These provisions will be dealt with later in this report.

This enactment diminishes the force of the objections above referred to, which have been raised to the principle that birth within the British dominions confers British nationality. The consideration of the expediency of modifying the common law in this respect is hardly within the terms of the reference to us; but if it were we should be disposed to agree with the views of the majority of the royal commissioners of 1869, and on the whole should not be pre-

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pared to suggest any alteration of the law. Evidence as to the place of birth affords in most cases a simple and easy proof of British nationality for which it would be difficult to find a satisfactory substitute.

7. The exceptions to the common-law rule that British nationality is determined by the place of birth are few, and if carefully examined are not exceptions at all, so far as the principle is concerned. The rule really is that all persons born "within the ligeance" are subjects of the crown. Consequently the child of an alien enemy born in a part of His Majesty's dominions which is at the time in hostile occupation is not a British subject. Again, the child born within the British dominions of an ambassador or other diplomatic agent accredited to the crown by a foreign sovereign is not a British subject. The limits of this latter exception have not been exactly ascertained.

8. The acquisition of British nationality as a consequence of conquest or cession of territory lies beyond the scope of this present report.

9. With the exception of the case of the King's son,[a] who seems to be recognized by the common law as a British subject, wherever born, the acquisition of the status of a British subject by parentage rests on statute law. A person whose father or paternal grandfather was born within His Majesty's dominions is deemed a natural-born British subject, although he himself was born abroad. It is to be observed that it is not accurate to say that the son of a natural-born British subject is in every case himself a British subject. The effect of the statutes, of which the above rule is the result, is that either the father or the paternal grandfather must have been actually born within His Majesty's dominions. The statutes referred to are: 25 Edw. III, Stat. 2; 7 Anne, c. 5, s. 3; 4 Geo. II, c. 21, s. 1; 13 Geo. III, c. 21.

10. We suggest, though the question does not fall strictly within the terms of the reference to us, that these provisions should be repealed and the law consolidated. We think the opportunity might be taken to act on the recommendation of the royal commission of 1869, and that it would be desirable to limit the transmission of British nationality to the first generation, by enacting that no person born out of the dominions of the Crown should be a British subject unless his father had been born within the dominions of the Crown and was also at the time of the birth of that person a British subject. A recommendation as to the children of a naturalized British subject born out of the dominions will be found later in this report. Some question has arisen whether the law as laid down in the above statutes applies throughout His Majesty's dominions. We think that doubt should be removed, and the law, with the suggested modification, made of universal application.

11. A question of some difficulty arises here which ought not to be passed over altogether without notice. It is this:

In applying the principle that every person born within the British dominions is invested with British nationality, what is the exact

[a] Perhaps there is also the case of the child, born abroad, of an ambassador or other diplomatic agent accredited to a foreign court. *See* Calvin's case, 2 State Trials, 585.

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meaning and extent of the expression "British dominions?" Is it applicable only to those countries which form part of British territory, or does it include also some or all of the countries wherein His Majesty exercises jurisdiction or authority of a more or less extensive character, such as protectorates or spheres of influence? It seems to us that the principle can apply only to those countries which have become portions of British territory by conquest, cession, or occupation, and that it does not apply to countries which do not form any portion of British territory, however large and extensive may be the powers of administration and jurisdiction possesed by the Crown therein, "by treaty, capitulation, grant, usage, sufferance, or other lawful means." (Foreign Jurisdiction act, 1890, 53 and 54 Vict., c. 37, s. 1.)

12. To the category of persons who are British subjects by reason of their birth having taken place within His Majesty's dominions must be added those who are born on board a British ship. Some doubt exists as to the extent of this rule. There seems to be no doubt that a person is a natural-born British subject who is (*a*) born on board a British ship of war, wherever such ship may be; (*b*) born on board a British merchant vessel on the high seas. The principal questions which have been raised are (1) whether a person born on board a British merchant vessel in a port of a foreign state, or in other foreign waters, is a British subject; (2) whether a person born on board a foreign ship in British territorial waters, or within the body of a county, is a British subject. We think it important that the law in this respect should be declared, and we consider that the simplest rule would be that a person born on a British ship in foreign waters should be a British subject, but that a person born on board a foreign ship should not be deemed to be a British subject merely because the ship was at the time of his birth in British waters.

13. We now come to the consideration of the questions which form the main subject of the reference to us, namely, the present state of the law relating to the acquisition, loss, and reacquisition of British nationality, and whether any and what amendments in that law should be recommended.

14. Prior to the act of 1847 (7 and 8 Vict., c. 66), the only means by which an alien could acquire any of the distinctive rights of a British subject were by special act of Parliament or by letters of denization. The passing of the act of 1844 and the fuller powers given by the act of 1870 rendered the recourse to these methods less frequent. Special acts of Parliament conferring British nationality are, however, still from time to time passed. Instances have occurred in which such acts have been so imperfectly drafted as to give rise to questions of great difficulty and to cause much disappointment, especially by the absence of provisions for the naturalization of the children of the naturalized person. It must be borne in mind that strong objection in point of principle has been made on more than one occasion in Parliament to the passing of special acts of naturalization. We think that there will probably be even less occasion than there is at present for passing these special acts if a simplified and somewhat extended form of naturalization is granted in accordance with our recommendations. We suggest, however, that in order to secure that such special acts should confer the rights which are contemplated the standing orders of the Houses of Parliament

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should include provisions for embodying in private acts of naturalization the main enactments of the general law, either under the act of 1870 or under the new legislation which we recommend should supersede that statute. In this way the rights and duties of persons naturalized by special act of Parliament and of those dependent on them would be made in all respects identical with those of persons naturalized by the certificate of the secretary of state.

15. We think there should be no alteration in the law as regards denization. The grant of any of the rights of a British subject by letters of denization is an ancient prerogative of the Crown; and though there is seldom occasion to resort to it at the present day, we think it ought to be preserved, as it now is by section 13 of the naturalization act of 1870.

16. Naturalization by certificate of the secretary of state was introduced in 1844 by the act to amend the laws relating to aliens. (7 and 8 Vict., c. 66.) The only condition imposed by that act was that the applicant should come to reside in some part of Great Britain or Ireland with intent to settle therein. The applicant was required to present a memorial stating his age, profession, trade, or other occupation, and the duration of his residence in Great Britain or Ireland, and all other grounds on which he sought to obtain any of the rights and capacities of a natural-born British subject. The act made it the duty of the secretary of state to inquire into the circumstances of each case, to consider the memorial, and the grant or refusal of the certificate was in his discretion. In 1856 the secretary of state was advised that it would be lawful to insert in certificates of naturalization a clause to the effect that such certificates were granted upon condition that the grantees should continue to reside permanently in the United Kingdom, and that the certificate should be determinable on the grantee ceasing so to reside. This advice was acted on, but the practice of granting conditional certificates of naturalization was disapproved by the royal commissioners of 1869 and ceased upon the repeal of the act of 1844 by the act of 1870. The secretary of state has been advised that a certificate under the latter act is not revocable on the ground of having been obtained by fraud, and that it is not competent for him to annex any condition, as to residence or otherwise, providing for the avoidance of the certificate for breach of the condition. In a later part of our report we deal with the question whether it is desirable that some provision should be made for the avoidance or determination of a certificate.

17. The main amendments of the law effected by the act of 1870 were:

(1) Removal of the restrictions upon the acquisition and holding of real and personal property by aliens in the United Kingdom, except property in British ships.

(2) Requirement, as a condition of a grant of a certificate of naturalization, of residence for five years in the United Kingdom, or of service under the Crown for the same period, and of intention of continuing so to reside or serve after naturalization.

(3) Limitation of the principle that British nationality is indelible (*a*) by permitting a natural-born British subject, who also at his birth became a subject of a foreign state, to divest himself of British nationality; (*b*) by making the loss of British nationality

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a necessary and immediate consequence of voluntary naturalization in a foreign country.

(4) Detailed provisions as to the effect of naturalization or loss of nationality by the husband or father upon the status of the wife and children.

(5) Provisions for the readmission or renaturalization of a person who had lost his British nationality.

18. In considering the question expressly referred to us, "the doubts and difficulties which have arisen in connexion with the interpretation and administration of the acts relating to naturalization," and the desirability of their amendment, it is important to bear in mind the principal reasons which operate to induce aliens to apply for admission to British nationality.

19. The reason which formerly afforded the chief motive for becoming a British subject was the incapacity of aliens to hold real property and some descriptions of personal property. This incapacity, as already stated, no longer exists except in the case of British ships. The disability was partially removed by the act of 1844 and entirely, with the above exception, by the act of 1870.

20. An alien is incapable of being a member of the privy council, or of either House of Parliament, of holding any municipal office, or of voting at Parliamentary or municipal elections, or of enjoying any office or place of trust either civil or military. A considerable proportion of the applications for naturalization made by persons who intend to continue to reside in this country are made for the purpose of obtaining the removal of these disqualifications.

21. In this connexion we may observe that the provisions of section 3 of the act of settlement (12 and 13 Will. III, ch. 2) prohibiting a naturalized alien from being a member of the privy council or of either House of Parliament still remain on the statute book; although so far as they relate to persons naturalized under the act of 1870 they are practically superseded by section 7 (3) of that statute. We think that so much of section 3 of the act of settlement as is referred to above should be expressly repealed with regard to all naturalized persons.

22. Speaking generally, commissions in the army and navy are not given to aliens, nor are aliens admitted to civil-service examinations. It is frequently the case that a parent desires naturalization or readmission to British nationality, mainly for the purpose of removing the disqualification of the children, who, if they reside with the parent, will at once become naturalized with him.

23. It also often happens that an alien residing in this country desires naturalization for himself or his children in order that he or they may obtain the protection accorded in a foreign country to a British subject. The belief, usually mistaken, that naturalization as a British subject protects a person against compulsory military service in a country to which he still owes allegiance is frequently a reason for desiring this protection. The right to the benefit and the liability to the obligation of the provisions of the foreign jurisdiction act, 1890, and the foreign marriage act, 1892, has been already referred to.

24. The advantages or supposed advantages of obtaining the status of a British subject in a foreign country occasionally give rise to applications for naturalization which are not bona fide. It is by no

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means an uncommon case that a certificate of naturalization is obtained by means of what is, in fact, a fraudulent statement of the intention of the applicant. He has really no intention to reside in the United Kingdom; all he wants is that he himself, or perhaps more commonly his son, who is a minor, may possess a document which will, in the eyes of the authorities of a foreign country, establish his title to be a British subject.

Experience seems to show that cases of this kind are common, and that the embarrassments to which they give rise are formidable enough to make it desirable that provision should be made for the avoidance, when necessary, of certificates which have been granted on a false and fraudulent statement, either as to actual residence or as to intention to reside.

25. With reference to the amendments required in the act of 1870, it appears that one of the principal defects in that act arises from the obscurity of the provision contained in section 7 as to the effect, if any, of a certificate of naturalization outside the limits of the United Kingdom. The section provides that:

> An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalizaton, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty of that effect.

26. This enactment is so obscurely worded that it has been construed in different senses by different authorities. On the one hand, it has been held that the operation of the section is confined to the United Kingdom and ceases so soon as the naturalized person is outside its borders, and consequently that the statute does not confer upon a naturalized alien the status of a British subject outside the United Kingdom either in a foreign country or in a British colony. Other authorities have, however, maintained that the statute confers the status of a British subject everywhere, except when the naturalized person is actually within the country of which at the time of naturalization he was, and of which he still remains, a subject.

Amongst other difficulties, this obscurity in the construction of this section has been an obstacle in the way of negotiating the conventions contemplated in section 3 of the act of 1870, for the purpose of securing that naturalized persons shall be divested of their former nationality. It is impossible to ask a foreign country to deprive its subjects of their nationality unless this country is in a position to offer in return the status of a British subject, recognized everywhere, both within and without His Majesty's dominions.

27. Whatever may be the true construction of this enactment, there is no great difference in practice between natural-born and naturalized British subjects so far as regards their obligations to any country which may be also entitled to their allegiance. It is frequently the case that a person who is a natural-born British subject—for instance. a person who is born in a foreign country, but whose father was born in His Majesty's dominions—is also the subject of the foreign country. But the British Government does not regard such a person as entitled to protection against any obligation imposed by the law of the foreign country so long as he remains within the limits of that

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country. A naturalized person who is also a subject of a foreign state is for all practical purposes exactly in the same position, except that by the terms of the section referred to he is not while in the foreign country of which he remains a subject "deemed to be a British subject" at all. In the case supposed neither the natural-born nor the naturalized British subject could be protected against military service while actually in the state which claims his allegiance.

28. In our opinion, all differences between the status of a natural-born British subject and of a naturalized British subject should, as far as possible, be abolished. It is especially desirable that a naturalized alien should, like a natural-born British subject, remain a British subject everywhere and for all purposes unless and until he divests himself of or loses his nationality in one of the ways provided by law. The law of this country can not, of course, operate to confer on or divest a person of any status existing under a foreign law, and ought not to purport to do so. The drafting of the naturalization act of 1870 is in some particulars open to criticism on this ground. It follows that the extent and character of the protection, if any, to be afforded a person in any country which, notwithstanding his acquisition of British nationality, still under its laws has a right to his allegiance, should not, and, indeed, can not, be regulated by municipal law, but must be regulated by international comity. It is most desirable that cases of double nationality should be reduced within the narrowest limits by the adoption of the principle that naturalization in one country carries with it the loss of prior nationality; but in so far as this principle is not adopted it will be necessary to continue to act upon the rule, which is at present recognized, that when a person has a double allegiance he is under a paramount obligation to that one of the two countries in which he for the time being is.

29. At present naturalization can be obtained in the United Kingdom under the following conditions:

(*a*) A certain period of residence in the United Kingdom or of service under the Crown prior to naturalization is required.

(*b*) There must be a declaration of intention to reside in the United Kingdom or to serve under the Crown.

(*c*) The granting or withholding of the certificate is in the absolute discretion of the secretary of state.

30. We think that these conditions should be modified in the following respects:

We see no reason why, if conditions substantially identical with those which qualify for naturalization in the United Kingdom are fulfilled by aliens residing in any other part of His Majesty's dominions, the government of the possession in which the alien has satisfied these conditions should not have power to grant or to recommend to the home government the grant of complete naturalization as a British subject.

31. This result might be attained in different ways. Probably the simplest course would be to enact to the effect that if it appeared to His Majesty in council that under a law in force in any British possession the conditions to be fulfilled by aliens before admission to the rights, privileges, and capacities of British subjects to be enjoyed within the limits of the possession included conditions which were substantially the same as those required for the grant of certificates of naturalization under an act of the United Kingdom it should be

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lawful for His Majesty, by order in council, to empower the governor of that possession, in his discretion, to grant to any person on whom the aforesaid rights, privileges, and capacities had been conferred under the local law a certificate of naturalization in a prescribed form, and that certificate should confer upon the grantee the same rights, privileges, and capacities, and impose upon him the same duties, liabilities, and obligations, as those conferred or imposed by, and have the same effect in all respects as, a certificate of naturalization granted by a secretary of state.

It should also be provided that His Majesty in council might revoke any such order when it appeared that the law of the British possession had been so altered as not to justify the continuance of the order, but that, unless revoked, the order in council should continue in force notwithstanding any amendment or alteration of the law of the possession.

In the case of a possession in regard to which no order in council had been made, we think that the governor might have power in his discretion to recommend to the home government, for a certificate of naturalization, any alien whom he could certify to have satisfied within the possession conditions identical mutatis mutandis with those required for naturalization in the United Kingdom, and that the secretary of state might, in his discretion, grant a certificate upon such recommendation. Certificates granted in accordance with the recommendations of this paragraph would confer all the privileges of British nationality both within and without His Majesty's dominions.

32. From time to time, beginning as early as the thirty-fifth year of Charles II, and perhaps earlier, legislatures of British possessions have passed acts purporting to confer naturalization on aliens under various specified conditions. Such of these acts as are still in force are set out in the appendix. In so far as these acts purport to confer upon aliens certain of the rights of natural-born British subjects within the possession no question arises. It has always, for instance, been within the power of the legislature of any possession to confer upon an alien the right to acquire and hold land within the territory affected. But difficult questions have from time to time arisen, and may probably arise in the future, as to the effect of this legislation upon the rights and duties of the persons so naturalized outside the limits of the British possession. For instance, can a person naturalized locally in British India be convicted in England for a murder committed in France? Or has he the right to be married before His Majesty's consul-general at Smyrna? These and similar questions, it will be observed, affect the rights and duties of locally naturalized persons. It is another and a different question how far such persons should be recognized as proper subjects for "good offices" as between the British and foreign governments. This is a matter not of law, but of discretion, and need not, in our opinion, be considered in this report. But we think that the legal position of such persons should be made clear, and we recommend that in substitution for section 16 of the act of 1870 a provision should be enacted to the effect that nothing in the act should affect the power of the legislature of any British possession to confer upon any alien, to be enjoyed by him within the limits of that possession, any of the rights, privileges, or capacities enjoyable therein by persons born within His Majesty's dominions. Taken in connection with the provisions above recommended for creat-

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ing the full status of a British subject, an enactment to this effect would, we think, leave no room for doubt as to the nature and effect of local naturalization. We think it right to add that although the conferring of the rights and privileges of British subjects within the limits of any possession of the King, but not elsewhere, is usually termed "naturalization," that expression would more properly be limited to the grant of the status of a British subject which is entitled to recognition everywhere, both within and without His Majesty's dominions. Indeed, a case has occurred in which the fact of a person having been admitted to the status of a British subject under the law of a colony has been held, probably through misunderstanding of the limited character of the rights conferred, to prevent the resumption of his nationality in the country of his origin.

33. If these principles are adopted, certificates of naturalization conferring the status of a British subject in all parts of the world would be given on similar conditions: (1) By a secretary of state in the United Kingdom; (2) by the governor of a British possession under the power above recommended. The legislature of each British possession would, as at present, be free to determine the conditions, the mode, and the effect within the possession of what is known as local naturalization.

34. We now pass to the consideration of the amendments of the law which appear to us to be required in reference to (*a*) the acquisition by an alien of British nationality; (*b*) the loss by a British subject, whether natural-born or naturalized, of British nationality.

35. We do not think it is necessary to maintain the distinction made in the act of 1870, section 8, between "readmission" and "naturalization." A person who has become an alien under the provisions of the act must before he or she is qualified for readmission fulfill the same conditions as are required for naturalization. We see no sufficient reason for distinguishing between a statutory and any other alien, and consider that it would tend to the simplification of the law if the provisions of section 8 were repealed and not reenacted.

36. The first condition required by the naturalization act, 1870, for obtaining a certificate of naturalization is that the alien should, within such limited time before making his application as may have been allowed by one of His Majesty's principal secretaries of state either by general order or on any special occasion, have resided in the United Kingdom for a period of not less than five years or have been in the service of the Crown for a period of not less than five years. We see no reason to suggest any alteration of this provision, except so far as is necessary to meet the case of recommendation to the secretary of state by governors of British possessions as proposed in paragraph 31.

37. The next condition required is that the alien applying for naturalization must intend when naturalized either to reside in the United Kingdom or to serve under the Crown.

We think that this condition should be altered by substituting the words "the King's dominions" for "United Kingdom." We see no reason why residence in any part of His Majesty's dominions should not be sufficient to satisfy the condition.

38. These are the only statutory conditions required at present for a certificate of naturalization. A question above referred to here arises, viz, whether any and what provision should be made for the

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avoidance of a certificate found to have been obtained by fraudulent representations. Those representations may be false either as regards the alleged facts as to residence or as to the existence of the alleged intention to reside. Residence is a fact capable of proof. Intention to reside is not equally capable of proof, and many cases have occurred where subsequent events have shown that no such intention could, in fact, have been entertained. There are many cases where naturalization has been sought for the sole purpose of obtaining protection in a foreign country in which the naturalized person intended to reside. There is no power under the act of 1870 to set aside or revoke a certificate of naturalization which has once been granted by reason of its having been obtained by false and fraudulent statements of fact as to actual residence or as to intention to reside.

39. We think that there should be power, vested, as the case may be, in the secretary of state or in the governor of a British possession to which such an order in council as has been above referred to applies, to revoke a certificate of naturalization which was proved to his satisfaction to have been obtained by false or fraudulent representation and that the certificate thereupon become void.

40. Except as hereafter mentioned, we think that it should be made clear that persons under disability, i. e., minors, married women, idiots, and lunatics, should not be capable of receiving certificates of naturalization.

41. Certificates of naturalization granted under the act of 1870 should, we think, operate as if granted under the new act; and the secretary of state should be empowered to grant, if he thinks fit, a certificate under the new act to any person holding a certificate under the act of 1844 or who has been naturalized by a special act.

42. The act of 1870 contains a provision enabling the secretary of state to grant a certificate of British nationality to "a person with respect to whose nationality as a British subject a doubt exists." Different views have been entertained as to the effect and scope of this provision. It has on the one hand been regarded as being introduced simply in order to meet the case of a person who might possibly be already a British subject, but who had fulfilled the conditions necessary for naturalization, by providing that the grant of a certificate of naturalization should not be evidence that he was not a British subject prior to his naturalization. The provision has, on the other hand, been regarded as having a much wider operation and as entitling the secretary of state, in any case in which he might consider a doubt existed whether or not a person was a British subject, to grant a special certificate of naturalization, though the conditions prescribed by the act have not been fulfilled. We think it should be made clear that the jurisdiction of the secretary of state extends only to the granting of a certificate in such a form as not to prejudice the question whether or not the applicant was already a British subject. The certificate should contain a statement of the existence of the doubt, but in all other respects the conditions ordinarily required for the grant of a certificate should be observed. This is in fact in accordance with established practice:

43. Having dealt with the acquisition of nationality, we next proceed to deal with the ways in which nationality may be lost. In the law as it at present stands the provisions relating to the case of a natural-born and of a naturalized British subject are to some extent

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different. By section 4 of the naturalization act, 1870, a person who is a British subject by reason of his having been born within the King's dominions but who also became at birth (by reason of parentage or otherwise) a subject of a foreign state may, if of full age and not under any disability, make a declaration of alienage, and shall from and after the making of such declaration cease to be a British subject. There is a similar provision with regard to a person born out of His Majesty's dominions to a father being a British subject. This section, as it stands, is open to criticism on the ground that it appears to assume that in every case a person born out of His Majesty's dominions to a father who is a British subject would be himself a British subject. This, however, is not always so, as has already been pointed out.

44. The object of this section is to obviate as far as possible the complications arising from double nationality, which have been already referred to, by allowing a person who is a natural-born British subject and also by birth a subject of a foreign state the right of divesting himself of his British nationality. We think these provisions should be simplified and redrafted, but we do not suggest any alteration of the law. The only case in which a person who has become a British subject by naturalization is empowered to make a declaration of alienage is the peculiar case provided for by section 3 of the act of 1870 and referred to in paragraph 26 of this report.

45. Nationality may also be lost when a British subject, whether naturalized or natural-born, becomes voluntarily naturalized in a foreign country.

The expression "voluntarily naturalized" is not entirely free from obscurity. Does it imply some act done for the express and primary purpose of obtaining a foreign nationality, or an act which, though voluntary, is not done for this express purpose, but for some other object to which change of nationality is attached as an incident? For instance, different views have been entertained by different legal experts whether the marriage of a British subject with a foreign woman, the legal consequence of which in her country is to invest the husband with her nationality, is voluntary naturalization within the meaning of the section. Or, again, to take an extreme case, suppose that by the law[a] of a foreign state all persons landing on its shores at once become its subjects, would the act of landing with or without a knowledge of the consequence be a voluntary naturalization? We think that the law should be made more definite and that British nationality should not be lost unless the person who is naturalized in the foreign country has expressly applied for naturalization or done some act from which acceptance of the foreign nationality may reasonably be inferred.[b]

46. The mode in which nationality may be lost by persons under disability will be dealt with in a later portion of this report.

47. We come now to consider the questions which have given rise to the greatest difficulty in practice—the effect of naturalization upon the status of dependent persons.

48. First as to the wife. By section 16 of the act of 1844 (7 and 8 Vict., c. 66) it was provided that any woman married to a natural-

[a] *See* pp. 64, 65, of the Appendix to the Report of the Royal Commission of 1869. Case of New Granada.

[b] *See* note by Sir Dennis Fitzpatrick, *infra*.

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born subject, or person naturalized, should be deemed and taken to be herself naturalized and have all the rights and privileges of a natural-born British subject. No provision was made for the case of a natural-born or naturalized British woman marrying an alien. The common law still governed her status, and she did not lose her British nationality. The act of 1870 adopted the general principle that the nationality of the married woman should be that of her husband: "A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject."

49. We do not propose any substantial alteration in the law. We think, however, that it should be so expressed as to purport to deal only with the question whether or not the woman becomes or ceases to be a British subject according to the law of this country, and not to attempt to define her status as regards the law of other countries. All that our law is concerned with is whether the woman is an alien or a British subject, and when and by what means she ceases to be, or becomes, the one or the other. The substantial matters are that a woman who is an alien becomes a British subject by marrying a British subject; that a woman who is a British subject ceases to be a British subject by marrying an alien; and that whenever during the continuance of a marriage the husband becomes or ceases to be a British subject the wife at the same moment becomes or ceases to be a British subject.

50. It will be convenient here to consider the effect upon the status of the woman of the dissolution of marriage by death or divorce. The act of 1870 is not clear as to the effect of dissolution of marriage in these cases. At present, if a woman is married to a British subject or to an alien and the marriage is terminated by his death, she continues to be a British subject or an alien, as the case may be, until something further occurs to alter her status. The same probably holds good when the marriage is terminated by divorce. We think, however that the position of a divorced woman should be made clear.

51. A question arises whether in the case of a woman who has lost her British nationality by marrying an alien, and has become a widow, there should be any relaxation of the ordinary conditions which must be fulfilled before she can be readmitted to British nationality. At present a widow may obtain a certificate of readmission to British nationality in the manner prescribed by section 8 of the act of 1870. This is in practice held to impose upon the widow the same conditions as to residence and intention to reside as are imposed upon any alien applying for a certificate of naturalization. The principal reason for any relaxation of such conditions is to be found in the facilities which might result to her infant children to become more speedily British subjects, and so to relieve them from any disqualifications on this ground from entering the public service. The latter question, however, we propose to deal with otherwise. Apart from this indirect advantage, we see no reason why a woman who has lost her nationality by marrying an alien should be placed on a footing different from that of any other alien, and we therefore recommend that, as is in fact required at present, a woman in this position before again becoming a British subject should fulfil the conditions required for naturalization.

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52. We have next to deal with the effect of naturalization of a parent upon the status of children born (1) before, (2) after, naturalization.

53. The present law on this subject is contained in subsections 3, 4, and 5 of section 10 of the naturalization act, 1870. There has been some conflict of opinion in regard to the strict interpretation of this section,[a] but in recent practice its effect has been taken to be as follows: Any child who is born in a foreign country, whether before or after naturalization of the parent, and who during infancy becomes resident with the father or mother (being a widow) in any part of the United Kingdom, is deemed to be a naturalized British subject. Conversely, where a father or a mother (being a widow) has lost British nationality any child who during infancy and after the naturalization of the parents abroad has become resident in the country where the father or mother is naturalized, and has, according to the law of that country, become naturalized therein, becomes a subject of that country and thereupon ceases to be a British subject. There is also a provision for resumption of British nationality by a child whose parent has been readmitted to that status, but as we propose to dispense with the distinction between naturalization and readmission this needs no further notice.

54. It will be seen that the test at present of the acquisition of British nationality by an infant is (1) the naturalization of the parent; (2) residence with the parent in the United Kingdom. Loss of British nationality depends (1) on loss by parent; (2) on residence in the country where the parent is naturalized; (3) on the law of that country recognising the child as also naturalized therein. It appears to us that the law as it stands is needlessly complicated, and that it leaves undefined the amount and character of residence necessary in each case to affect the nationality. We think it would be desirable to adopt a clearer and more easily applied test of the nationality of minor children.

55. Dealing first with the case of children born before the naturalization of the parent, we see no reason why, if the parent so desires and the secretary of state approves, such children should not be naturalized at the same time with the parent and their names included in his certificate. All that seems necessary is that the parent should make a declaration of his intention that the child sought to be naturalized with him should reside with him in His Majesty's dominions. It will be in the discretion of the secretary of state to include or not to include the minor in the certificate. The nationality of the child would if this recommendation is adopted be provable at once by the evidence of the certificate itself, and would not depend upon questions of law and fact which may be more or less uncertain and difficult to ascertain. But we think that it is right that after the child comes of age he should within a time to be limited (say one year) have the option of becoming an alien by declaration of alienage. The power given to the secretary of state should be extended to naturalizing authorities in British dominions.

[a] Anson's History of the Constitution (Part II, p. 69); Dicey's Conflict of Laws, p. 191; and Hall's Foreign Jurisdiction of the British Crown, p. 27.

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56. If our recommendation is adopted that the distinction between a natural-born and a naturalized British subject should be as far as possible abolished, it should be enacted that every child born to a naturalized father after naturalization, whether born within His Majesty's dominions or not, is a British subject. The requirement of residence with the naturalized parent which at present exists should, we think, be abolished.

57. A case of hardship sometimes arises when a woman who is a British subject has lost her nationality by marrying an alien, and is left a widow with infant children. Her home and connexions being in the United Kingdom she desires her infant sons to enter the British army or navy or some branch of the civil service. She cannot however be readmitted to British nationality without satisfying the requirement of five years' residence, and consequently the sons cannot obtain the necessary naturalization by "becoming resident" with her. The difficulty has been hitherto met by the secretary of state feeling himself at liberty to grant a certificate of naturalization to a minor for the purpose of enabling him to enter the public service. It is, however, doubtful whether the act of 1870 contemplates the grant of a certificate to a minor at all. We think this power should be expressly given, and that the secretary of state should be entitled in suitable cases, for special reasons which he may consider sufficient, to grant to a minor a certificate of naturalization without fulfilment of the conditions ordinarily required.

58. With regard to the effect upon a minor child of loss of British nationality by the father, whether by declaration of alienage or otherwise, we think that the principle that the nationality of a minor child should depend upon that of the father should govern, and that the child should lose his British nationality at the same moment that his father becomes an alien. Any hardship which this rule might work in individual cases would, we think, be sufficiently obviated by the power above recommended to be given to the secretary of state to grant certificates for sufficient reasons to minors.

59. The status of the children of a widow of a British subject who loses her nationality by marriage with a subject of a foreign state is somewhat obscure under the provisions of section 10 (3) of the act of 1870. According to one view, if she not only become an alien by English law, but also becomes a subject of foreign state, and the child by her former husband becomes resident in the foreign country, and also becomes naturalized therein, such child becomes a subject of that state and loses British nationality. A doubt has, however, been expressed whether this provision applies to the case of a widow who loses her nationality by marriage with an alien. We recommend that this obscurity should be cleared up. We are not entirely agreed as to the most desirable amendment of the law. The majority of the committee think that the marriage of a widow—being a British subject—with an alien should not affect the national status of her children, if any, by her first husband, whether or not they became residents in and subjects of the country of the second husband. To meet the case where the children as a fact follow the mother and are invested with the nationality of the stepfather, they think that such children should be empowered on coming of age to make a declaration of alienage. The minority are of opinion that it would be more

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consistent with principle to provide that when a widow ceases to be a British subject, by reason of her marriage with an alien, her infant children should also cease to be British subjects, but should be entitled to resume British nationality by a declaration to be made within one year after coming of age.

60. We have to acknowledge the very valuable services of our secretary, Mr. Wheeler, especially in collecting and arranging the voluminous materials which it has been necessary for us to consider.

SUMMARY OF RECOMMENDATIONS.

1. We recommend that the existing statute law relating to the acquisition and loss of British nationality should be consolidated, and that the statutes 25 Edw. III, Stat. 2; 7 Anne, c. 5, s. 3; 12 and 13 Will. III, c. 2 (part); 4 Geo. II, c. 21, s. 1; 13 Geo. III, c. 21; 33 Vict., c. 14; 33 and 34 Vict., c. 102; 35 and 36 Vict., c. 39; 58 and 59 Vict., c. 43, should be repealed.

2. We recommend that the existing law as to acquisition of British nationality by parentage should be reenacted in a simpler form, with this exception, that where the father was born out of His Majesty's dominions a child also born out of such dominions should not be a British subject. We also recommend that the law as to birth on board a British ship should be declared as stated in paragraph 12 of this report.

3. We recommend that provision should be made by legislation enabling a secretary of state or the governor of a British possession to confer the status of a British subject upon persons who fulfil the requisite conditions in any part of the British dominions, and that the status so conferred should be recognised by British law everywhere, both within and without His Majesty's dominions. This provision should be without prejudice to the power of the legislature of any British possession to provide for the conferring upon any persons, under such conditions as it might see fit, the whole or any of the rights of British subjects within its own territory.

4. We recommend that the conditions necessary for the acquisition and loss of the status of a British subject should remain as at present, with the modifications as to residence, revocability of certificate, and otherwise, mentioned in detail in the report.

5. We recommend that the law as to the acquisition and loss of the status of a British subject by persons under disability should be simplified and modified in the manner stated in detail in the report.

We have the honour to be, sir, your obedient servants,

KENELM E. DIGBY.
F. H. VILLIERS.
D. FITZPATRICK.[a]
W. E. DAVIDSON.
H. BERTRAM COX.

W. WHEELER, *Secretary.*

[a] Subject to this, that I am not satisfied that what is suggested at the end of par. 45 is sufficient to get rid of the ambiguities arising from the present law. *See* my note of the 16th July, 1901, appended.

D. F. P.

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NOTE BY SIR DENNIS FITZPATRICK.

Section 6 of the naturalization act, 1870, provides that a British subject who has "voluntarily become naturalized" in a foreign state shall cease to be a British subject.

This provision is clear enough, and right enough, in so far as it applies to cases in which a British subject applies to a foreign state for what may be called "naturalization in solemn form," or in which, as, e. g., under the first clause of article 9 of the amended French code, he resorts to some other official procedure for the purpose of acquiring a foreign nationality.

But suppose a British subject, mainly with a view to his own comfort or happiness, or advancement, takes, in a foreign country, some action, having in itself no relation whatever to the acquisition of a national character, as, e. g., if he sets up some sort of business there, or acquires some sort of property there, or marries a woman of the country, or if he merely resides there for a certain time; and suppose the law of that country chooses, thereupon, ipso facto, to confer or impose upon him its nationality, either absolutely, or unless he has taken some step to ward off this result. In regard to such a case two questions present themselves, viz: First, are we to hold that that British subject has "voluntarily become naturalized" within the meaning of section 6 of our act? and, second, if we are, ought that section to be allowed to stand as it is without some amendment? As to the former question, the answer to it, we have been advised, is in the affirmative, provided the British subject had actual notice of the foreign law; otherwise in the negative. As to the latter question, assuming, as we are bound to do, that the answer to the former question is correct, I think that the law stands in need of amendment. To say nothing of the awkwardness of making the retention or loss of a man's British national character dependent on the state of his knowledge at a certain point of time, it seems to me that, even if the British subject concerned has notice of the foreign law, it is, under the circumstances, a very harsh thing to deprive him of his British nationality.

I may observe that the peculiar provisions of the foreign laws to which I refer have been condemned, both as offending against the principle that a man should not be invested with a new national character unless he actually applies for or accepts it, and also as laying a trap for the unwary.[a] But it is open to every state to enact such laws if it thinks fit, and if one of our subjects thoughtlessly brings himself within the operation of such a law, he must forfeit all claim to our protection so long as he remains within the limits of the state of which he has thus become a subject. This is the necessary consequence of his thoughtlessness, and he must accept it; but it is not a necessary consequence that he should be deprived of his British nationality. No doubt if he retains it we have the awkward result of a double nationality, but I do not think that is, under the circumstances, a sufficiently strong reason for depriving

[a] See Cogordan, pp. 117–118, and Hall, Foreign Jurisdiction, pp. 46 and 47. See also Calvo, § 644.

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him of his British nationality. The position was discussed in an article by M. Robinet de Clery in the year 1875 with reference to provisions of the Code Civil as they then stood, and it was further discussed in 1886 in the debates on the amending law which was passed in 1889. The view taken was that the acquisition by a French subject of a foreign nationality otherwise than by naturalization in solemn form should not entail the loss of his French nationality unless he had either applied for or accepted that foreign nationality; and in the law of 1889 it was provided (art. 17, cl. 1) that the acquisition by him of a foreign nationality "par l'effet de la loi" (as distinguished from its acquisition by naturalization in solemn form) should not have this effect except where he obtained the foreign nationality on his own application (sur sa demande).[a]

I would suggest that, following pretty closely this example, there should be substituted for the present provision of section 6 a clause to the effect that a British subject should cease to be such if he, not being under any disability, acquired the nationality of a foreign State *in pursuance of an official procedure established for that purpose*, and in the course of which he applied for or accepted that nationality.

This would provide for all ordinary cases that it seems desirable to hit, but there would remain two exceptional cases for consideration.

The first is the case of a Britsh subject acquiring the nationality of a foreign state ipso facto by accepting service under the government of that state.

I think it should be provided that such a man should cease to be a British subject unless he had accepted such service with the previous consent of the British Government.

The second case is the rare one of a British subject having the nationality of a foreign state conferred on him personally, say, in recognition of eminent services, by a special grant of the legislature or other authority in that state which, so far as could be seen, would seem to have been made spontaneously and without any sort of application or acceptance on his part.[b] If it is thought necessary to provide for this case it would probably be best to enact that the person so naturalized should cease to be a British subject on the expiration of one month from the date of the naturalization, unless within that time he sent to the proper authority of the foreign state a protest against the naturalization or the British Government assented to the naturalization.

D. FITZPATRICK.

16th JULY, 1901.

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[a] Journal du droit international privé for 1875, p. 80. Weiss droit international privé, T. i., pp. 450–452.

[b] See Weiss, op. cit., pp. 446, 447.

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THE COMMONWEALTH OF AUSTRALIA.

Mr. Bray, consul-general, Melbourne, Australia, to the Assistant Secretary of State, September 1, 1906.

AMERICAN CONSULATE-GENERAL,
Melbourne, Australia, September 1, 1906.

SIR: In reply to circular instructions, dated July 9, 1906, in regard to citizenship in foreign countries, I beg to report as to the Australian commonwealth as follows:

1. The laws relating to citizenship in Australia are contained in the following sections of the naturalization act of Great Britain, 1870, and the Australian constitution and naturalization acts:

Section 16 of the naturalization act, 1870 (Great Britain and Ireland), reads:

> All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges or any of the privileges of naturalization to be enjoyed by such person within the limits of such possession shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner and subject to the same rules in, and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

Section 51 (XIX) of the Commonwealth of Australia constitution act is as follows:

> The Parliament shall, subject to this constitution, have power to make laws for the peace, order, and good government of the commonwealth, with respect to * * * naturalization and aliens.

A copy of the naturalization act, dated October 13, 1903, which was enacted pursuant to that power, is forwarded herewith.

Section 117 of the Australian constitution act, which also has a bearing on the matter, is as follows:

> A subject of the Queen, resident in any state, shall not be subject in any other state to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in any other state.

2. The only provision applicable to the means by which citizenship in Australia is lost is section 11 of the naturalization act referred to above.

3. There is no Australian law in regard to the renunciation and reacquisition of citizenship.

4. Australian citizenship is not affected by residence in foreign parts.

5. As Australian citizens are British subjects, the duty of protecting them abroad is performed by the foreign representatives of the British Government.

JOHN P. BRAY,
Consul-General.

[Enclosure.]

AN ACT RELATING TO NATURALIZATION.

[Assented to 13th October, 1903.]

Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

1. This act may be cited as the naturalization act, 1903.

2. This act shall commence on a day to be fixed by proclamation.[a]

[a Proclaimed to commence January 1, 1904.]

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3. In this act, unless the contrary intention appears—

"British subject" means a natural-born British subject or a naturalized person.

"Certificate of naturalization" means a certificate of naturalization granted under this act, and being at the time when it is relied upon in connection with any provision of this act unrevoked.

"Justice of the peace" means a justice of the peace of the commonwealth or of a State.

"Naturalized" means naturalized under this act.

"Statutory declaration" means a statutory declaration within the meaning of any law of the commonwealth, or of the State in which the declaration is made relating to statutory declarations.

"The minister" means the minister for external affairs.

4. A person who has before the passage of this act obtained in a State or in a colony which has become a State a certificate of naturalization or letters of naturalization shall be deemed to be naturalized.

5. A person resident in the commonwealth, not being a British subject, and not being an aboriginal native of Asia, Africa, or the islands of the Pacific, excepting New Zealand, who intends to settle in the commonwealth, and who (*a*) has resided in Australia continuously for two years immediately preceding the application; or (*b*) has obtained in the United Kingdom a certificate of naturalization or letters of naturalization, may apply to the governor-general for a certificate of naturalization.

6. (1) An applicant under paragraph (*a*) of the preceding section shall produce in support of his application (*a*) his own statutory declaration stating his name, age, birthplace, occupation, and residence, the length of his residence in Australia, and that he intends to settle in the commonwealth; and (*b*) a certificate signed by a justice of the peace, a postmaster, a teacher of a state school, or an officer of police that the applicant is known to him and is a person of good repute.

(2) An applicant under paragraph (*b*) of the preceding section shall produce in support of his application—

(*a*) His certificate or letters of naturalization; and

(*b*) His own statutory declaration that he is the person named in the certificate or letters that he obtained the certificate or letters without any fraud or intentional false statement that the signature and the seal (if any) thereto are, to the best of his knowledge and belief, genuine, and that he intends to settle in the commonwealth.

7. The governor-general in council, if satisfied with the evidence adduced, shall consider the application, and may, with or without assigning any reason, in his discretion grant or withhold a certificate of naturalization, as he thinks most conducive to the public good.

Provided that in the case of an applicant who has not obtained in the United Kingdom a certificate of naturalization or letters of naturalization the governor-general shall not issue the certificate until he has received from the applicant the certificate of a justice of the high court or a judge of a court of a State, or a police stipendiary or special magistrate, that the applicant has before him taken an oath or affirmation of allegiance in the form in the schedule to the constitution.

8. A person to whom a certificate of naturalization is granted shall in the commonwealth be entitled to all political and other rights, powers, and privileges and be subject to all obligations to which a natural-born British subject is entitled or subject in the commonwealth.

Provided that where by any provision of the constitution or of any act or State constitution or act a distinction is made between the rights, powers, or privileges of natural-born British subjects and those of persons naturalized in the commonwealth or in a state, the rights, powers, and privileges conferred by this section shall for the purposes of that provision be only those (if any) to which persons so naturalized are therein expressed to be entitled.

9. A woman who, not being a British subject, marries a British subject, shall in the commonwealth be deemed to be thereby naturalized and have the same rights, powers, and privileges, and be subject to the same obligations as a person who has obtained a certificate of naturalization.

10. An infant, not being a natural-born British subject (*a*) whose father or whose mother (being a widow or divorced) has obtained a certificate of naturalization; or (*b*) whose mother is married to a natural-born British subject or to a person who has obtained a certificate of naturalization, and who has at

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any time resided in Australia with such father or mother, shall in the commonwealth be deemed to be naturalized and have the same rights, powers, and privileges and be subject to the same obligations as a person who has obtained a certificate of naturalization.

11. Where it is proved to the satisfaction of the governor-general that a certificate of naturalization has been obtained by any untrue statement of fact or intention, the governor-general may revoke the certificate, which shall thereupon be and be taken to have been of no effect with respect either to the person who obtained the certificate or to any person naturalized by virtue thereof, and shall on demand be delivered up to the minister.

Provided that the revocation shall not affect rights previously acquired by any other person.

12. (1) The minister shall (*a*) enroll as of record memorials of all certificates of naturalization granted under this act; (*b*) cancel all certificates of naturalization which have been revoked; (*c*) cause to be made indexes of the certificates of naturalization and permit any person at all reasonable times to inspect the indexes and to make copies of the certificates on payment of the prescribed fee; (*d*) cause to be laid before both houses of the parliament annually a return showing the number of persons to whom certificates of naturalization have been granted under this act, the nations to which they belonged, and whence they came.

(2) A person to whom a certificate of naturalization is granted shall not be liable to any fee or charge in respect thereof.

13. From the commencement of this act the right to issue certificates of naturalization in the commonwealth shall be exclusively vested in the government of the commonwealth, and no certificate of naturalization or letters of naturalization issued after the commencement of this act under any state act shall be of any effect.

14. (1) The governor-general may make regulations prescribing all matters which by this act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this act.

(2) All such regulations shall be notified in the Gazette, and shall thereupon have the force of law.

(3) All such regulations shall be laid before both houses of the parliament within thirty days after the making thereof, if the parliament be then sitting, and if not, then within thirty days after the next meeting of the parliament.

BAHAMAS.

[Enclosure in despatch from Mr. Knowles, vice-consul at Nassau, September 5, 1906.]

MEMORANDUM ON THE CONDITIONS ON WHICH ALIENS MAY ACQUIRE THE STATUS OF BRITISH SUBJECTS WITHIN THE LIMITS OF THE COLONY.

Any alien may present a memorial to the governor in council, stating the age, profession, trade, or other occupation of the memorialist, and the duration of his residence in the colony, and all other grounds on which he seeks to obtain the rights of a natural-born British subject.

This memorial is considered by the governor in council, and the governor is empowered, with the advice of the council, to grant a certificate under the great seal of the colony. Before such certificate is granted the oath of allegiance must be taken.

This certificate must be recorded in the office of the public secretary and registrar of records for the colony and certain fees paid into the treasury before it is handed over to the memorialist.

Since April 11, 1872, real and personal property of every description may be taken and held and acquired and disposed of by aliens in all respects as by a natural-born subject. Title to property may also be derived through, from, or in succession to an alien.

An alien may not own a British ship.

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[Enclosure in despatch from Mr. Knowles, vice-consul at Nassau, September 5, 1906.]

The colonial secretary to Mr. Knowles, August 17, 1906.

COLONIAL SECRETARY'S OFFICE,
Nassau, August 17, 1906.

SIR: In reply to your letter of the 8th instant I have the honor to inform you that, on all the points on which information is sought in the circular of the 9th of July from the Department of State (herewith returned), the law of this colony is the law of the United Kingdom, with two exceptions, viz:

(1) In pursuance of the powers conferred by the imperial act for the naturalization of aliens (10 and 11 Vic., ch. 83), now replaced by the naturalization act, 1870, the colonial legislature in the year 1848 passed the naturalization act of that year which defines the conditions on which aliens may acquire the status of British subjects within the limits of the colony.

(2) By the naturalization (amendment) No. 2 act, 1872, provision is made for local regulations governing the exercise of powers granted to judicial officers and governors in British possessions with reference to declarations of alienage and certificate of readmission to British nationality; but no such regulations have yet been made.

(3) With reference to question 5, it is the practice of the colonial government, when its assistance is sought for the protection of a native or resident of the colony in a foreign country, to communicate directly with the British diplomatic or consular representative in the country, and not through the Imperial Government.

I have, etc.,

W. HART BENNETT,
Colonial Secretary.

May, 1872.)
by an act of th
passed in the Vict., Ch. 4.)
ne naturaliz
AN ACT F of alienag NATURALIZATION OF ALIENS.[a]
readmiss
but el MARCH 22nd, 1848.

WHEREAS and by an act of the imperial Parliament of Great Britain and Ireland passed in the tenth and eleventh years of your majesty's reign, entitled "An act for the naturalization of aliens," it is, amongst other things, enacted and declared that all laws, statutes, and ordinances which shall hereafter be made and enacted by the legislatures of any of Her Majesty's colonies or possessions abroad for imparting to any person or persons the privileges, or any of the privileges, of naturalization, to be by any such person or persons exercised and enjoyed within the limits of any such colonies or possessions, respectively, shall within such limits have the force and authority of law, any law, statute, or usage to the contrary notwithstanding. And whereas it is expedient that the powers of the said act of Parliament vested in colonial legislatures should

[a] Text as printed in the Appendix to the Report of the Inter-Departmental Committee, Parl. Pap. (1901), Cd. 723.

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be exercised by the legislature of this colony, and that an act should be passed for the purpose of affording greater facility for the naturalization of aliens than now by law exists. May it therefore please Your Majesty that it may be enacted, and be it enacted, by his Excellency George Benvenuto Mathew, esquire, governor and commander in chief in and over the Bahama Islands, the legislative council and assembly of the said islands, and it is hereby enacted and ordained, by the authority of the same, that upon obtaining the certificate and taking the oath hereinafter prescribed every alien now residing in, or who shall hereafter come to reside in any part of this colony, shall enjoy within the colony all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit within the said colony.

II. And be it enacted, that it shall be lawful for any such alien as aforesaid to present to the governor in council a memorial stating the age, profession, trade, or other occupation of the memorialist and the duration of his residence in the colony, and all other the grounds on which he seeks to obtain the rights and capacities of a natural-born British subject, and praying the said governor to grant to the memorialist the certificate hereinafter mentioned.

III. And be it enacted, that every such memorial shall be considered by the governor in council, who shall inquire into the circumstances of each case and receive all such evidence as shall be afforded by affidavit or otherwise as such governor, with the advice of the council, may deem necessary or propose for proving the truth of the allegations contained in such memorial, and that the said governor, with the advice of the said council, if he shall so think fit, may, upon the memorialist taking the oath hereinafter prescribed, issue a certificate under the great seal of the colony reciting such of the contents of the memorial as he shall think to be true and material, as also the fact that the memorialist has taken and subscribed the oath by this act required, and subscribed, and granting to the memorialist all the rights and capacities of a natural-born subject within the colony.

IV. And be it enacted, that before any alien as aforesaid shall be granted the memorialist to whom such rights and capacities are intended to be granted by such certificate shall take and subscribe the following oath (that is to say), I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to the governor to Her Majesty Queen Victoria, and will defend her to the utmost of my power against all conspiracies and attempts whatever which may be made against her person, Crown, or dignity, and I will do my utmost endeavour to disclose and make known to Her Majesty, her heirs and successors, all treasons and traitorous conspiracies which may be formed against her or them, and I do faithfully promise to maintain, support, and defend to the utmost of my power the succession of the Crown, which succession by an act entitled an act for the further limitation of the Crown and better securing the rights and privileges of the subject is and stands limited to the Princess Sophia, electress of Hanover, and the heirs of the body being Protestants hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the Crown of this

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realm, so help me God; which oath shall be taken and subscribed by such memorialist, and shall be duly administered to him or her before the clerk of the council for these islands—if such oath shall be taken and subscribed in the island of New Providence or before any one of Her Majesty's justices of the peace for these islands or for any district thereof—if such oath shall be taken and subscribed at any other island of this government, and in the latter case the justice of the peace administering the oath shall grant to the person taking and subscribing it a certificate of his or her having taken and subscribed such oath accordingly.

V. And be it enacted, that all certificates granted under this act shall be recorded in the office of the public secretary and registrar of records for the colony.

VI. And be it enacted, that the fees payable in respect of the several proceedings hereby authorised shall be fixed and regulated by the governor in council and shall be paid into the public treasury of these islands in aid of the expenses of the government thereof.

VII. And be it enacted, that the word "governor" in this act shall extend and apply to the person lawfully administering the government of these islands for the time being, and the words "clerk of the council" shall extend and apply to the person discharging the duties of that office for the time being.

[35 Vict., Cap. 20.]

AN ACT SUPPLEMENTARY TO THE IMPERIAL STATUTE (33 VICT., C. 14), TO AMEND THE LAW RELATING TO THE LEGAL CONDITION OF ALIENS AND BRITISH SUBJECTS.[a]

(Assented to 23d May, 1872.)

Whereas in and by an act of the Imperial Parliament of Great Britain and Ireland, passed in the thirty-third year of Her Majesty's reign, designated "the naturalization act, 1870," provision is made for taking declaration of alienage and of British nationality and for granting certificates of readmission to British nationality, not only in the United Kingdom, but elsewhere in Her Majesty's dominions, and power is granted to certain judicial officers in the British possessions to take such declarations and to the governors of such possessions to grant such certificates.

And whereas the said act was amended by an act passed in the same year designated the naturalization oaths act, 1870, and the two acts are collectively designated the "naturalization acts, 1870."

And whereas an act was passed during the present session of assembly making provision for carrying into effect the said acts of Parliament, but in consequence of a clerical error in the engrossing thereof the meaning of its provisions is obscure and doubtful, and it is expedient that there should be further legislation on the subject,

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[a] Text as printed in the Appendix to the Report of the Inter-Departmental Committee. Parl. Pap. (1901), Cd. 723.

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may it therefore please the Queen's most Excellent Majesty that it may be enacted, and be it enacted, by his honor Captain George Cumine Strahan, Royal Artillery, administrator of the government of the Bahama Islands, the legislative council and assembly of the said islands, and it is hereby enacted and ordained by the authority of the same, as follows:

I. The governor may, acting by and with the advice of Her Majesty's executive council, provide by regulations for the following matters:

1. The registration in the office of the registrar of records of all declarations taken and certificates granted and oaths of allegiance administered in the colony under the said acts.

2. The proof in any legal proceedings of such oaths.

3. The persons by whom certified copies of such declarations, certificates, and oaths, and of entries of the same in such register, may be given.

4. The transmission to Her Majesty's secretary of state for the colonies, for the purpose of registration, or safe-keeping, or of being produced as evidence of any declaration taken, certificates granted, or oaths of allegiance administered in the colony under the said acts, or of any copies of such declarations, certificates, or oaths; also of copies of entries of such declarations, certificates, and oaths contained in such register as aforesaid.

5. The imposition and application of fees in respect of any such registration, and in respect of the taking of any such declaration, or the grant of any such certificate, or the administration of any such oath, and in respect of certified copies of any such declaration, certificate, or oath.

II. The act heretofore passed during the present session and hereinbefore referred to is hereby repealed, and it shall not be necessary to chapter or print the same among the acts of this session or otherwise.

BARBADOS.

Mr. Clare, consul at Barbados, to the Assistant Secretary of State, September 22, 1906.

AMERICAN CONSULATE,
Barbados, West Indies, September 22, 1906.

SIR: Referring to the Department's circular of July 9, 1906, entitled "Citizenship," I have the honor to say that it will be sufficient to refer to the British imperial naturalization act of 1870 (33 and 34 Vict., c. 14), which governs in this colony. There are no local laws relating to naturalization and the acquisition of citizenship in this island, the act above quoted governing in all cases.

I have, etc.,

ARTHUR J. CLARE,
American Consul.

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BERMUDA.

[Enclosures in despatch from Mr. Heyl, vice and deputy consul at Hamilton, Bermuda, September 14, 1906.]

[1857.—No. 11.]

AN ACT TO AMEND THE LAWS IN FORCE IN THESE ISLANDS RELATING TO ALIENS.

Whereas it is expedient that the laws now in force in these, Your Majesty's, Bermuda or Somers Islands affecting aliens should be amended, and that Your Majesty should be enabled to grant to aliens the rights and capacities of British subjects in these islands under such regulations and with such restrictions and exceptions as are hereinafter provided, and whereas by an act of the Parliament of Great Britain and Ireland passed in the session holden in the tenth and eleventh years of Your Majesty's reign, it is, among other things, enacted and declared that all laws, statutes, and ordinances which should thereafter be made and enacted by the legislatures of any of Your Majesty's colonies or possessions abroad for imparting to any person or persons the privileges of naturalization to be by such person or persons exercised and enjoyed within the limits of any such colonies and possessions, respectively, should within such limits have the force and authority of law, any law, statute, or usage to the contrary in any wise notwithstanding:

I. We therefore, Your Majesty's most dutiful and loyal subjects, the legislative council of these, Your Majesty's, Bermuda or Somers Islands, do most humbly beseech Your Majesty that it may be enacted, and be it enacted by Your Majesty's governor, council, and assembly, and it is hereby enacted and ordained by the authority of the same, that every person now born, or hereafter to be born, out of Her Majesty's dominions, of a mother being a natural-born subject of the United Kingdom of Great Britain and Ireland shall be capable of taking to him, his heirs, executors, or administrators, any estate in the said islands, real or personal, by devise or purchase or inheritance of succession.

II. And be it enacted, that from and after the commencement of this act every alien being the subject of a friendly state shall and may take and hold, by purchase, gift, bequest, representation, or otherwise, every species of personal property in the said islands, except chattels real, as fully and effectually to all intents and purposes, and with the same rights, remedies, exemptions, privileges, and capacities as if he were a natural-born subject of the United Kngdom.

III. And be it enacted, that every alien who at the time of the commencement of this act shall be residing in, or who shall thereafter come to reside in, any part of the said islands, and being the subject of a friendly state, may, by grant, lease, demise, assignment, bequest, representation, or otherwise, take and hold any lands, houses, or other tenements, for the purpose of residence or of occupation by him or his servants, or for the purpose of any business, trade, or manufacture, for any term of years, not exceeding twenty-one years, as fully and effectually to all intents and purposes, and

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with the same rights, remedies, exemptions, and privileges as if he were a natural-born subject of the United Kingdom.

IV. And be it enacted, that upon obtaining the certificate and taking the oath hereinafter prescribed, every alien who at the time of the commencement of this act shall be residing in, or who shall thereafter come to reside in, the said islands, with intent to settle in the said islands, shall enjoy all the rights and capacities in the said islands which a natural-born subject of the United Kingdom can enjoy or transmit, except that such alien shall not be capable of becoming a member of the council in the said islands nor a member of the house of assembly in the said islands nor of enjoying such other rights and capacities (if any) as shall be specially excepted in and by the certificate to be granted in manner hereinafter mentioned.

V. And be it enacted, that it shall be lawful for any such alien as aforesaid to present to the governor of the said islands a memorial stating the age, profession, trade, or other occupation of the memorialist and the duration of his residence in the said islands, and all other the grounds on which he seeks to obtain any of the rights and capacities in the said islands of a natural-born British subject, and praying the governor, by and with the advice and consent of the council for the said islands, to grant to the memorialist the certificate hereinafter mentioned.

VI. And be it enacted, that every such memorial shall be considered by the said governor in council, and the said governor in council shall inquire into the circumstances of each case and receive all such evidence as shall be offered by affidavit or otherwise as the said governor in council may deem necessary or proper for proving or disproving the truth of the allegations contained in such memorial, and that the said governor, if he shall so think fit, by and with the advice and consent of the said council, may issue a certificate under the great seal of the said islands, reciting such of the contents of the memorial as the said governor, by and with the advice and consent aforesaid, shall consider to be true and material and granting to the memorialist (upon his taking the oath hereinafter prescribed) all the rights and capacities in the said islands of a natural-born British subject, except the capacity of being a member of the council in the said islands or a member of the house of assembly in the said islands, and except the rights and capacities (if any) specially excepted in and by the said certificate.

VII. And be it enacted, that such certificate, together with the form of oath hereinafter directed to be thereupon indorsed or thereto annexed shall be registered in the secretary's office in the said islands and shall be enrolled for safe custody, as of record, in Her Majesty's court of chancery in the said islands and may be inspected and copies thereof taken under such regulations as the said court shall direct.

VIII. And be it enacted, that within three calendar months from the day of the date of such certificate every memorialist to whom rights and capacities shall be granted by such certificate shall take and subscribe the following oath (that is to say):

I, *A. B.*, do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria and will defend her to the utmost of my power against all conspiracies and attempts whatever which may be made against her person, Crown, or dignity, and I will do my utmost endeavour to

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disclose and make known to Her Majesty, her heirs, and successors all treasons and traitorous conspiracies which may be formed against her or them, and I do faithfully promise to maintain, support, and defend to the utmost of my power the succession of the Crown, which succession, by an act intituled "An act for the further limitation of the Crown and better securing the rights and liberties of the subject," stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants, hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the Crown of the realm of Great Britain and Ireland.

So help me God,

which oath shall be taken and subscribed by such memorialist and shall be duly administered to him before the governor of the said islands for the time being, who shall cause to be indorsed upon or annexed to the said certificate a memorandum in writing of such memorialist having taken and subscribed such oath accordingly, and such memorandum shall be signed by the governor before whom the said oath shall be administered, and in the event of the demise of the Crown of Great Britain and Ireland it shall be lawful to insert in the form of the oath the name of the King or Queen of the United Kingdom of Great Britain and Ireland and the corresponding references thereto, instead of the name of Her most Gracious Majesty and the references thereto, as specified in the foregoing form of oath.

IX. And be it enacted, that the several proceedings hereby authorised to be taken for obtaining such certificate as aforesaid, shall be regulated in such manner as the governor in council shall from time to time direct.

X. And be it enacted, that all persons who shall have been naturalized in the said islands before the commencement of this act, and who shall have resided in the said islands during five successive years, shall be deemed entitled to and shall enjoy all such rights and capacities of British subjects in the said islands as may be conferred on aliens by the provisions of this act.

XI. Provided always, and be it enacted, that nothing in this act contained shall prejudice, or be construed to prejudice, any rights or interests in law or in equity, whether vested or contingent, under any will, deed, or settlement executed by any natural-born subject of Great Britain or Ireland before the commencement of this act, or under any descent or representation from or under any such natural-born subject who shall have died before the commencement of this act.

XII. And be it enacted, that nothing herein contained shall be construed so as to take away or diminish any right, privilege, or capacity heretofore lawfully possessed by or belonging to aliens residing in the said islands so far as relates to the possession or enjoyment of any real or personal property in the said islands, but that all such rights shall continue to be enjoyed by such aliens in as full and ample a manner as such rights were enjoyed before the passing of this act.

XIII. And be it enacted, that any woman married or who shall be married to a natural-born subject or person naturalized shall be deemed and taken to be herself naturalized and have all the rights and privileges in the said islands of a natural-born subject.

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XIV. And be it enacted, that this act shall commence in operation when Her Majesty's royal assent thereto shall be given and made known in the said islands, and not before that time.

Passed the legislative council the thirteenth day of March, 1857.

JOHN HARVEY DARRELL,
President.

Passed the assembly this thirty-first day of March, 1857.
By order of the House.

ALEXR. EWING,
Speaker.

Assented to this 11th day of April, 1857.

FREEMAN MURRAY,
Governor.

[1897.—No. 7.]

AN ACT TO AMEND THE LAW RELATING TO ALIENS.

[21st OCTOBER, 1897.]

Whereas it is expedient to amend the law relating to aliens with the view of affording relief to women who, having been British subjects, have already become, or shall hereafter become, aliens by marriage, and for other purposes.

We therefore, &c., be it enacted, &c.

1. This act may be cited alone as the alien act, 1897, and with the alien act, 1857, as the alien acts, 1857–1897.

2. In the third and subsequent sections of this act the following words and expressions shall, where not inconsistent with the context, have the meanings assigned to them in this section:

"Alien" shall mean a person other than a statutory alien as defined in this section, who having been a natural-born British subject has before the commencement of this act become an alien.

"Statutory alien" shall mean a woman who, having been a British subject, shall have become, either before or after the commencement of this act, an alien by reason of her marriage to an alien, or by reason of her husband becoming an alien after her marriage.

"Commencement" of this act means the time at which this act comes into operation.

"Deed" includes every description of conveyance and assurance inter vivos which would be sufficient to pass land in these islands from any person legally capable of conveying the same to any person legally capable of acquiring the same.

3. Any alien or statutory alien who at the commencement of this act is, or if he or she were a British subject would be, possessed of or entitled to land in these islands, may at any time or times before the expiration of five years from and after the commencement of this act, dispose of such land by deed in the same manner as if he or she were a British subject.

4. Any statutory alien who shall become a statutory alien after the commencement of this act may at any time or times before the expiration of five years from and after the time of her becoming a

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statutory alien dispose by deed of any land in these islands of or to which she shall be possessed or entitled at the time of her becoming a statutory alien.

5. Any alien or statutory alien who shall, after the commencement of this act, become entitled by devise or inheritance to any land in these islands which such alien or statutory alien would have been legally capable of holding if he or she had remained a British subject, may at any time or times before the expiration of five years from and after the time at which such alien or statutory alien shall have become so entitled by devise or inheritance, as the case may be, dispose of such land by deed in the same manner as if he or she were a British subject.

6. Any deed by which a statutory alien shall dispose of land under this act may be executed by her without the concurrence of her husband in the same manner as if she were unmarried, and her receipt alone shall be a good discharge for the purchase money, and it shall not be necessary for such deed to be acknowledged by such statutory alien in the manner in which married women are now required by law to acknowledge certain deeds executed by them for conveying real estate in these islands.

7. No land which an alien or a statutory alien shall dispose of by virtue of and in accordance with this act shall be escheated to the Crown by reason of his or her being an alien, and no land which an alien or statutory alien is hereby empowered to dispose of shall be escheated during the period within which he or she is hereby empowered to dispose thereof.

8. No alien, whether such alien was or was not a natural-born British subject, shall be entitled to be registered as qualified to be elected or to vote, or shall be admitted to be put in nomination or to vote, at any election of a member or members of the house of assembly or of any municipal corporation, or shall be entitled to any franchise or privilege in respect of any land of his wife, or of his or her receipt of the rents and profits of any land in these islands.

9. No deed by which an alien or a statutory alien shall after the commencement of this act dispose of land under this act shall be valid or effectual for that purpose unless the same shall be executed by such alien or statutory alien in the presence of, and shall be attested by, two or more credible and disinterested witnesses, and such execution shall be proved, and such deed be recorded, in the manner following, that is to say—

(1) If executed in these islands by the affidavit or solemn affirmation or declaration in writing of one of the attesting witnesses of the due execution thereof by such alien or statutory alien, and of the true date of such execution made and signed before the chief justice or an assistant justice of the court of general assize, or before the colonial secretary of these islands, and certified by such judge or secretary under his hand and seal.

(2) If executed in the United Kingdom or in the Channel Islands by the affidavit or solemn affirmation or declaration in writing of one of the attesting witnesses of the due execution thereof by such alien or statutory alien, and of the true date and place of such execution, made and signed before a judge of the supreme court of judicature in England or of the high court of justice in Scotland or Ireland, or of a court of record in the Channel Islands, and

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certified by such judge under his hand and seal, or before a commissioner of the said supreme court for taking oaths and affidavits, and certified by him under his hand and seal, or before the mayor or other chief magistrate of any city or town corporate, and certified by him under his hand and official seal, or the public seal of such city or town corporate.

(3) If executed in any British colony or possession out of the United Kingdom, other than the Channel Islands, by the affidavit or solemn affirmation or declaration in writing of one of the attesting witnesses of the due execution thereof by such alien or statutory alien, and of the true date and place of such execution, made and signed before the governor, lieutenant-governor, or president, or person administering the government of such colony or possession, and certified by him under his hand, and the great seal of the colony or possession, or under his seal at arms, or before a judge of any court of record having a seal, and certified by him under his hand and the seal of such court, or before the mayor or other chief magistrate of any city or town in such colony or possession, and certified by him under his hand and official seal, or under the public seal of such city or town corporate.

(4) If executed in any place out of Her Majesty's dominions by the affidavit or solemn affirmation or declaration in writing (in English, or accompanied by a translation into English verified by the minister or other functionary before whom the same shall be made) of one of the attesting witnesses of the due execution thereof by such alien or statutory alien, and of the true date and place of such execution, made and signed before a British minister or ambassador or secretary of legation resident in the country where such deed has been so executed, and certified by him under his hand, and official or other seal, or before a British consul, vice-consul, or consular agent, within whose district or consular jurisdiction such deed shall have been executed, and certified by him under his hand and seal of office, or before a judge of any court having a seal, and certified by him under his hand and the seal of such court.

Every affidavit or solemn affirmation or declaration required by or made under this act, and every certificate thereof, shall be endorsed on or annexed to the deed to which they relate, under the hand of the judge or other officer or functionary before whom such affidavit or affirmation or declaration shall be made, and under such seal as aforesaid.

(5) Every such deed, together with all such proofs and certificates as aforesaid, shall be recorded in the secretary's office in these islands within six calendar months, if executed in these islands, or within twelve calendar months if executed elsewhere, after the execution thereof by such alien or statutory alien; and for the purposes of this enactment the date of such execution shall be deemed to be the date when the deed is proved by such affidavit or affirmation or declaration to have been executed by such alien or statutory alien unless and until the contrary be shewn; and every such deed shall be deemed to be recorded within the meaning of this enactment on and from the date of the delivery thereof, with the proper proofs, into the secretary's office for the purpose of being recorded, with the fee for recording the same at the rate allowed by the fee act, 1819, or such deposit as shall be estimated by the colonial secretary, or the clerk

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in the secretary's office, as the amount of such fee, and the colonial secretary or the clerk shall, on receipt thereof, endorse on such deed the date of the receipt thereof, and shall deliver to the person depositing such deed a receipt for the amount of such fee or deposit, and when such deed shall, after having been recorded, be delivered back to the person depositing the same or his authorised agent or lawful representative, a receipt therefor shall be signed by the person to whom such deed shall delivered in a book to be provided and kept for the purpose, or in such other manner as the colonial secretary shall require.

Out of the fees paid for recording such deeds the colonial secretary shall defray the cost of recording the same, at a rate not exceeding sixpence for every folio of one hundred words, reckoning four figures as one word, and the remainder of such fees shall be paid by the colonial secretary into the public treasury.

If the fee or deposit paid at the time of the delivery of such deed to be recorded shall be less than the fee legally payable for the recording of such deed, the person to whom the same is delivered shall forthwith pay the difference, and if such fee or deposit exceeds the amount legally payable for such recording the colonial secretary or the clerk shall repay the excess to the person to whom the deed is delivered.

10. The wife of any alien, whether such alien was or was not a natural-born British subject, who shall, after the commencement of this act, obtain a certificate of naturalization under the provisions of the alien act, 1857, shall be entitled only to such rights and capacities of a natural-born British subject in these islands as her husband shall be entitled to by virtue of such certificate.

11. Whenever, before the commencement of this act, any alien or statutory alien shall, in good faith and for valuable consideration, have disposed by deed to any British subject of any land in these islands which such alien or statutory alien could, if a British subject, have lawfully disposed of by such deed, such land shall not be escheated to the Crown by reason of his or her being an alien or statutory alien, and the title of the person or persons lawfully holding such land under or by virtue of such deed shall be as valid as if such alien or statutory alien had been a British subject at the time of the execution of such deed.

12. The first section of the lien act, 1857, is hereby repealed.

13. This act shall not come into operation unless and until the governor notifies by proclamation that it is Her Majesty's pleasure not to disallow the same, and subject as aforesaid it shall come into operation on the thirty-first day of December, one thousand eight hundred and ninety-seven, or as soon after that day as such proclamation as aforesaid shall be made.

[1900.—No. 13.]

THE ALIEN ACT, 1900.

[1st March, 1900.]

Whereas by the alien act, 1897, it is enacted that no deed by which an alien or statutory alien should after the commencement of that act dispose of land under the provisions of the said act should be

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valid or effectual for that purpose unless the same should be executed by such alien in the presence of and attested by two or more credible witnesses and such execution should be proved in the manner prescribed by the 9th section of the said act: But no provision is made in the said act for the execution of such deeds by the attorney of any alien or statutory alien and it is expedient to authorise and validate the execution of such deeds by the attorneys of such aliens:

We therefore, &c., be it enacted, &c.:

1. Any deed or conveyance of any land or real estate in these islands of any alien or statutory alien under the provisions of the alien act, 1897, heretofore executed or hereafter to be executed by any attorney of such alien or statutory alien appointed by any power of attorney executed, proved, and recorded in the manner prescribed or allowed by the ninth section of the said act with respect to conveyances of lands in these islands of aliens or statutory aliens shall be as valid and effectual as if such deed or conveyance had been signed, sealed, and executed by such alien or statutory alien by his or her own hand, and in the case of any married woman party thereto had been acknowledged to have been freely and voluntarily executed by her.

2. This act shall be construed together and as one with the alien acts, 1857–1897, and may be cited together with those acts as the alien acts, 1857–1900.

[1901.—No. 5.]

THE ALIEN ACT, 1901.

[15TH JULY, 1901.]

Whereas a convention between the United Kingdom and the United States of America relative to the disposal of real and personal property, a copy of which convention is appended to this act, was signed at Washington on the second day of March, 1899, the ratifications of which were exchanged at Washington on the twenty-eighth day of July, 1900, and whereas it is deemed expedient to make such amendment of the law of these islands as will enable the stipulations of the said convention to be made applicable to this colony under the provisions of Article IV of the said convention:

Be it enacted by the governor, legislative council, and assembly of the Bermudas or Somers Islands as follows:

1. This act shall be construed together and as one with the alien act, 1897, except that the word "alien" as used in this act shall, where not inconsistent with the context, have its ordinary meaning, instead of the special meaning assigned thereto by the second clause of the alien act, 1897.

2. From and after the passing of this act, and during such time as the said convention between the United Kingdom and the United States of America relative to the disposal of real and personal property shall be applicable to this colony, the privileges granted by the fifth section of the alien act, 1897, to aliens and statutory aliens shall extend and apply to all aliens whatsoever; provided that, subject and without prejudice to the provisions of Article I of the said convention, the period within which such privileges may be exercised

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by any alien, either under the said fifth section or under this section, shall be three years, instead of five years as provided by the said fifth section.

3. Nothing in this act contained shall be construed to prejudice or affect any right which at the time of the passing of this act any alien or statutory alien has acquired or is entitled to under the provisions of the fifth section of the alien act, 1897.

4. Where any person shall desire to obtain a prolongation of the term of three years in which, under the provisions of Article I of the said convention, he would be allowed to sell any real property in these islands, he may present a memorial in writing to the governor, stating the circumstances which render it necessary that such term should be reasonably prolonged, and in any such case it shall be lawful for the governor in council, by warrant under his hand and the great seal of these islands, to prolong the said term for such reasonable period as the governor in council shall deem expedient.

BRITISH GUIANA.

COURT OF POLICY.

[Ordnance No. 7 [a] of 1891.]

AN ORDINANCE RELATING TO THE LEGAL CONDITION OF ALIENS AND BRITISH SUBJECTS.[b]

Ordinance enacted by His Excellency Sir Charles Bruce, knight commander of the most distinguished order of Saint Michael and Saint George, lieutenant-governor and commander in chief in and over the colony of British Guiana, vice-admiral and ordinary of the same, &c., &c., &c., with the advice and consent of the honourable the court of policy of the said colony.

To all to whom these presents do, may, or shall come, Greeting! Be it known:

Be it enacted by the governor of British Guiana, with the advice and consent of the court of policy thereof, as follows:

1. This ordinance may be cited for all purposes as the naturalization ordinance, 1891.

STATUS OF ALIENS.

2. Movable and immovable property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to movable and immovable property of every description may be derived through, from, or in succession to an alien in the same manner

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[a] Numbered 4/91 in Revised Laws.

[b] Text as printed in the appendix to the Report of the Inter-Departmental Committee. Parl. Pap. (1901), Cd. 723.

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in all respects as through, from, or in succession to a natural-born British subject: Provided that this section shall not—

(1) Confer any right on an alien to immovable property situate out of this colony, and shall not qualify an alien for any office or for any legislative franchise, but a person shall not be deemed to be disqualified for the office of interpreter by reason of his being an alien; or

(2) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him; or

(3) Affect any estate or interest in movable or immovable property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the coming into force of this ordinance, or in pursuance of any devolution by law on the death of any person dying before the coming into force of this ordinance; or

(4) Affect the liability of an alien to serve on juries under the provisions of any ordinance for the time being in force relating to juries.

NATURALIZATION.

3. (1) An alien who has resided in this colony, or has been in the service of the Crown, for a term in either case of not less than three years, and who intends, when naturalized, either to reside in this colony or to serve under the Crown, may apply to the government secretary for a certificate of naturalization.

(2) The applicant shall adduce in support of his application such evidence of his residence or service, and of his intention to reside or serve, as the case may be, as the government secretary may require. The government secretary shall, if satisfied with the evidence adduced, take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate, as he may think most conducive to the public good, and no appeal shall lie from his decision. No such certificate shall take effect until the applicant has taken the oath of allegiance, and until such certificate and oath have been recorded in the office of the registrar of British Guiana. Such oath shall be taken within two months after the date of the certificate, and such oath and certificate shall be recorded in a register book, to be kept for that purpose in the office of the registrar, within three months after the date of the certificate; and if default is made in complying with either of these requirements, the certificate shall be void and of no effect. A notice of the recording of every such certificate and oath shall forthwith be published by the registrar in "The Official Gazette."

(3) An alien to whom a certificate of naturalization is granted shall in this colony be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in this colony, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect.

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4. The government secretary may, in manner aforesaid, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject any doubt may exist, and such certificate shall contain a statement that it is granted for the purpose of quieting doubts as to the right of such person to be deemed a British subject, and the grant of such certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

5. The oath hereinbefore referred to as the oath of allegiance shall be in the form set forth in the promissory oaths ordinance of 1870, and the provisions as to affirming in lieu of swearing contained in the said ordinance shall apply in the same manner as if they were enacted in this ordinance.

6. Where the father, or the mother, being a widow, has obtained a certificate of naturalization in this colony, every child of such father or mother who during infancy has become resident with such father or mother in this colony shall within this colony be deemed to be a naturalized British subject.

SUPPLEMENTAL PROVISIONS.

7. A certificate of naturalization granted under this ordinance shall be in the form contained in the first schedule to this ordinance.

8. The oath of allegiance may be administered by any stipendiary magistrate, and shall be administered without fee.

9. (1) The fees payable in respect of a certificate of naturalization shall be those set forth in the second schedule to this ordinance.

(2) All such fees shall be paid over in such manner as the governor may from time to time direct to the receiver-general for the public use of the colony.

10. The governor and court of policy may from time to time make, and, when made, alter, amend, or repeal, regulations with respect to all or any of the following matters:

(1) The registration of certificates of naturalization;

(2) The imposition and application of fees in respect of the making of any declaration or the granting of any certificate authorised to be made or granted by the naturalization act, 1870, of the Imperial Parliament; and,

(3) Generally for the better carrying out of the provisions of this ordinance, and for the due proof in legal proceedings of all acts and things done thereunder.

11. The following provisions shall have effect with respect to evidence under this ordinance:

(1) Any declaration authorised to be made under the naturalization act, 1870, of the Imperial Parliament or under this ordinance may be proved in any legal proceeding by production of the original declaration, or of any copy thereof certified to be a true copy by the registrar, or by any person authorised by any regulation as aforesaid to give certified copies of such declaration; and the production of such declaration or of such copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned.

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(2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by the registrar, or by any person authorized by any regulation as aforesaid to give certified copies of such certificate; and

(3) Entries in any register authorised to be made in pursuance of this ordinance shall be proved by such copies and certified in such manner as may be directed by the registrar, and the copies of such entries shall be evidence of any matter by this ordinance, or by any regulation as aforesaid, authorised to be inserted in the register.

MISCELLANEOUS PROVISIONS.

12. Every person who wilfully or corruptly makes or subscribes any declaration under the naturalization act, 1870, of the imperial parliament, or under this ordinance, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

13. Nothing in this ordinance shall affect the provisions of the aliens ordinance, 1886.

14. Ordinance No. 16 of 1871 entitled "An ordinance to provide for the carrying into effect in this colony of the naturalization acts, 1870," is hereby repealed.

15. This ordinance shall come into force on the publication thereof.

And that no ignorance may be pretended of this our ordinance, these presents shall be printed and published in the customary manner.

Thus done and enacted at our adjourned quarterly assembly held at the Guiana public buildings, Georgetown, Demerara, this second day of April, one thousand eight hundred and ninety-one, and published on the eighth day of April, in the same year.

CHAS. BRUCE.

By command of the court:

FRANCIS VILLIERS,
Acting Secretary.

SCHEDULES.

THE FIRST SCHEDULE.—*Certificate of naturalization.*

British Guiana.

Know all men by these presents, that by virtue of the provisions of the naturalization ordinance, 1891, I have this day granted this certificate of naturalization to ——— ———, of ———, a native of ———.

[L. S.] ——— ———, Government Secretary.

Given under my hand and seal this —— day of ———, 1——.

Note.—The above certificate is void and of no effect unless the following oath is taken before a stipendiary magistrate within two months of the above date.

I, ——— ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.

(Signed) ——— ———.

Sworn before me this —— day of ———, 1——.

(Signed) ——— ———.

Stipendiary Magistrate.

Note.—The above certificate and oath must be recorded in the office of the registrar of British Guiana within three months from the date of the certificate, otherwise the certificate is void and of no effect.

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THE SECOND SCHEDULE.—*Table of fees.*

For what payable.	Amount payable.	To whom payable.
Certificate of naturalization	$5.00	The government secretary.
Recording certificate and oath	2.50	The registrar.
Certified copy of the same	2.50	The registrar.

COURT OF POLICY.

[Ordinance No. 27 [a] of 1891.]

AN ORDINANCE TO AMEND IN CERTAIN RESPECTS THE NATURALIZATION ORDINANCE, 1891.[b]

[8TH AUGUST, 1891.]

Whereas it is expedient to amend in certain respects the naturalization ordinance, 1891:

Be it therefore enacted by the governor of British Guiana, with the advice and consent of the court of policy thereof, as follows:

1. This ordinance may be cited as the naturalization ordinance, 1891, amendment ordinance, 1891.

2. This ordinance shall be construed as one with the naturalization ordinance, 1891, and the two ordinances may be referred to as the naturalization ordinances, 1891.

3. Sections 3 and 4 of the principal ordinance shall respectively be construed and have effect as if the word "the government secretary" were omitted therefrom and the words "the governor" were substituted instead thereof.

4. The form of a certificate of naturalization contained in the first schedule to the principal ordinance is hereby repealed, and the form of such certificate contained in the schedule to this ordinance shall be substituted instead thereof.

5. Notwithstanding anything in the principal ordinance, any alien holding office at the commencement of the principal ordinance or of this ordinance shall not be deemed to be disqualified for such office on account of his being an alien.

6. Nothing in the principal ordinance or in this ordinance shall affect the employment of any alien in any special and temporary service.

7. Nothing in this ordinance shall affect any naturalization of an alien already effected under the principal ordinance.

8. This ordinance shall come into force on the publication thereof.

SCHEDULE.

CERTIFICATE OF NATURALIZATION.

British Guiana.

The naturalization ordinances, 1891.

No. —.

Whereas ——— ———, an alien, now residing at ———, in the county of ———, in said colony, has presented to me a memorial praying for a certificate of naturalization, and alleging that he is a ———, and that he has resided in this colony for a term of —— years [*or* has been in the service of the Crown

[a] Numbered 4/91 in Revised Laws.

[b] Text as printed in the appendix to the Report of the Inter-Departmental Committee. Parl. Pap. (1901), Cd. 723.

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for a term of —— years] and intends when naturalized to reside in this colony [*or* to serve under the Crown]:

And whereas I have inquired into the circumstances of the case and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial, so far as the same relate to the memorialist:

Now, in pursuance of the authority given to me by the said ordinances, I grant to the aforesaid ——— ——— this certificate, and declare that he is hereby naturalized as a British subject, and that upon taking the oath of allegiance and recording this certificate and the said oath of allegiance in the manner provided by the said ordinances he shall in this colony be entitled to all political and other rights, powers, and privileges and be subject to all obligations to which a natural-born British subject is entitled or subject in this colony; with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to his obtaining this certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect.

In witness whereof I have hereto subscribed my name this —— day of ———, 1——.

(Signed) ——— ———,
Governor.

NOTE.—The above certificate is void and of no effect unless the following oath is taken before a stipendiary magistrate within two months of the above date:

Oath of allegiance.

I, ——— ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.

(Signed) ——— ———.

Sworn and subscribed before me this —— day of ———, 1——.

(Signed) ——— ———,
Stipendiary Magistrate.

NOTE.—The above certificate and oath must be recorded in the office of the registrar of British Guiana within three months from the date of the certificate; otherwise the certificate is void and of no effect.

BRITISH HONDURAS.

[Enclosure in despatch from Mr. Avery, consul at Belize, July 31, 1906.]

CONSOLIDATED LAWS OF THE COLONY OF BRITISH HONDURAS.

PART XIV.—*Of aliens.*

CHAPTER XXXVIII.

Section.
1. Capacity of aliens to acquire property.
2. Certificate of naturalization.
3. Form of oath of allegiance.
4. National status of infant children.
5. Form of certificate.
6. Time in which oath of allegiance to be taken.
7. Certificate to be recorded.
8. Fees.
9. Further regulations may be made.
10. Rules as to evidence.
11. Saving as to British ships.
12. Not to affect chapter 5.
13. Fees on readmission to British nationality.

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STATUS OF ALIENS IN THE COLONY OF BRITISH HONDURAS.

1. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided,

(1) This section shall not qualify an alien for any office or for a seat in the legislative council, or for any municipal, legislative, or other franchise, but a person shall not be deemed to be disqualified for the office of alcalde or interpreter by reason of his being an alien.

(2) This section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him.

(3) This section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the 19th day of November, 1883, or in pursuance of any devolution by law on the death of any person dying before the 19th day of November, 1883.

NATURALIZATION.

2. An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by the governor in council, either by general order or on any special occasion, has resided in this colony for a term of not less than five years, and intends when naturalized to reside in this colony may apply through the colonial secretary to the governor in council for a certificate of naturalization.

The applicant shall aduce in support of his application such evidence of his residence and intention to reside as the governor in council may require. The governor in council, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as the governor thinks most conducive to the public good, and no appeal shall lie from such decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in this colony be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in this colony.

An alien who has been naturalized previously to the passing of this chapter may apply to the governor in council for a certificate of naturalization under this chapter, and it shall be lawful for the governor in council to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in this colony.

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3. The oath in this chapter referred to as the oath of allegiance shall be in the form following, that is to say:

"I, ——— ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."

NATIONAL STATUS OF INFANT CHILDREN.

4. The following enactments shall be made with respect to the national status of children:

(1) Where the father, or the mother being a widow, has obtained a certificate of naturalization in this colony, every child of such father or mother, who during infancy has become resident with such father or mother in any part of this colony shall within this colony be deemed to be a naturalized British subject.

SUPPLEMENTAL PROVISIONS.

5. The certificate of naturalization shall be in the form given in schedule A of this chapter.

6. The oath of allegiance shall be taken and subscribed within sixty days of the date of the certificate of naturalization, and shall be administered by the colonial secretary or the chief justice, or any justice of the peace whom a dedimus shall be epecially directed for that purpose by the governor.

7. The certificate of naturalization, and oath so taken shall within three months from the date of such certificate, be recorded in the office of the keeper of records, in a special register book to be kept for the purpose, otherwise such certificate shall be void, and of no effect.

8. The fees enumerated in schedule B to this chapter shall be payable by the applicant in respect of a certificate of naturalization, and such fees shall be payable into the public treasury.

9. It shall be lawful for the governor in council to make further regulations in respect of the afore-mentioned supplemental provisions, and to alter or vary the forms or the fees specified in the schedules, and to repeal or alter any such regulation made in pursuance of this section.

10. The following regulations shall apply with respect to evidence under this chapter:

(1) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate or of any copy thereof certified to be a true copy by the keeper of records.

(2) Entries in any register authorized to be made in pursuance of this chapter shall be proved by copies certified by the keeper of records, and the copies of such entries shall be evidence of matter by this chapter authorized to be inserted in the register.

MISCELLANEOUS.

11. Nothing in this chapter contained shall qualify an alien to be the owner of a British ship.

12. Nothing in this chapter contained shall affect the provisions of chapter 5.

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13. The fees in schedule C to this chapter shall be paid to the officers respectively as therein directed, in cases where any matter or thing may be done in this colony under the provisions of the imperial act, 33 Victoria, ch. 14, "to amend the law relating to the legal condition of aliens and British subjects," and such fees shall be payable by such officer into the public treasury.

SCHEDULE A (SECTION 6).

BRITISH HONDURAS, to wit:

Know all men by these presents, that by virtue of the provisions of chapter 38 of the consolidated laws, the governor in council has this day been [SEAL.] pleased to grant this certificate of naturalization to ——— ——— of ———.

Governor. ———

Given under my hand and the public seal of the colony, this —— day of ———, A. D. 188—.

N. B.—The above certificate is of no effect unless the following oath is taken within sixty days of the above date. (Section 6.)

I, ——— ———, do swear that I will be faithful, and bear allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.

——— ———
Name of applicant.

Sworn before me this —— day of ———, A. D. 188—.

Colonial Secretary (or as the case may be).

N. B.—The above must be recorded in the office of the keeper of records, within three months from the date of the certificate, otherwise it is void and of no effect. (Section 7.)

SCHEDULE B.—(SECTION 8.)

Fees payable by applicant.	Amount of fees.	To whom payable.
	$ c.	
For a certificate of naturalization	5.00	The colonial secretary.
For administration of the oath of allegiance	0.50	To the officer administering the same.
For recording certificate and oath	2.50	The keeper of records.
For certified copies of the same	2.50	The keeper of records.

SCHEDULE C.—(SECTION 13.)

Fees payable by applicant.	Amount of fees.	To whom payable.
	$ c.	
For declaration of alienage or British nationality	0.75	The officer administering oath or declaration.
For certificate of readmission to British nationality	2.50	The colonial secretary.
For registering the same with oath	2.50	The officer registering the same.
For administration of the oath of allegiance	0.50	The officer administering the same.
For transmitting a declaration with or without oath for registration in England.	0.50	The officer transmitting the same.
For registration of declaration with or without the oath of allegiance.	2.50	The officer registering the same.
For certified copy of any declaration or certificate with or without oath.	2.50	The officer making the same

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CANADA.

[Enclosures in despatch from Mr. Foster, consul-general, Ottawa, Canada, September 3, 1906.]

[Revised Statutes of Canada.]

CHAP. 113.—AN ACT RESPECTING NATURALIZATION AND ALIENS.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

1. This act may be cited as "the naturalization act." 44 V., c. 13, s. 3.

INTERPRETATION.

2. In this act, unless the context otherwise requires—

(*a*) The expression "disability" means the disability of being an infant, lunatic, idiot, or married woman;

(*b*) The expression "officer in the diplomatic service of Her Majesty" means any ambassador, minister, or chargé d'affaires, or secretary of legation, or any person appointed by such ambassador, minister, chargé d'affaires, or secretary of legation, to execute any duty imposed upon an officer in the diplomatic service of Her Majesty by the act passed by the Parliament of the United Kingdom, known as "the naturalization act, 1870;"

(*c*) The expression "officer in the consular service of Her Majesty" means and includes consul-general, consul, vice-consul, and consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul, or consular agent;

(*d*) The expression "oath" includes affirmation, in the case of a person allowed by law to affirm in judicial cases;

(*e*) The expression "county" includes a union of counties and a judicial district or other judicial division;

(*f*) The expression "alien" includes a statutory alien;

(*g*) The expression "statutory alien" means a natural-born British subject who has become an alien under this act or any act or acts in that behalf;

(*h*) The expression "subject" includes a citizen when the foreign country referred to is a republic. (44 V., c. 13, s. 1, and s. 20, part.)

RIGHTS OF PROPERTY OF ALIENS.

3. Real and personal property of any description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural-born British subject; and a title to real and personal property of any description may be derived through, from, or in succession to an alien, in the same manner, in all respects, as through, from, or in succession to a natural-born British subject; but nothing in this section shall qualify an alien for any office, or for any municipal, parliamentary, or other franchise; nor shall anything therein entitle an alien to any right or privilege as a British

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subject, except such rights and privileges in respect of property as are hereby expressly conferred upon him:

(2) The provisions of this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the fourth day of July, one thousand eight hundred and eighty-three, or in pursuance of any devolution by law on the death of any person dying before the said date; nor shall the provisions of this section qualify an alien to be the owner of a British ship. (44 V., c. 13, s. 4.)

EXPATRIATION.

4. Whenever Her Majesty has entered into a convention with any foreign state to the effect that the subjects of that state who are naturalized as British subjects may divest themselves of their status as British subjects, and whenever Her Majesty, by order in council, passed under the third section of the act passed by the Parliament of the United Kingdom known as "The Naturalization Act, 1870," has declared that such convention has been entered into by Her Majesty, from and after the date of such order in council, any person originally a subject of the state referred to in such order, who has been naturalized as a British subject within Canada, may, within such limit of time as is prescribed in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall, within Canada, be regarded as an alien, and as a subject of the state to which he originally belonged, as aforesaid. (44 V., c. 13, s. 5.)

5. Any such declaration of alienage may be made before any of the persons following, that is to say:

(*a*) If the declarant is in the United Kingdom, in the presence of any justice of the peace;

(*b*) If elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, or of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose;

(*c*) If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty. (44 V., c. 13, s. 6.)

6. Any person who, by reason of his having been born within the dominions of Her Majesty, is a natural-born subject, but who, also, at the time of his birth became, under the law of any foreign state, a subject of such state, and is still such subject, may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall, within Canada, cease to be a British subject.

(2) Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall, within Canada, cease to be a British subject. (44 V., c. 13, s. 7.)

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EXPATRIATION.

7. Any British subject who has, at any time before or at any time after the fourth day of July, one thousand eight hundred and eighty-three, when in any foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed, within Canada, to have ceased to be a British subject, and shall be regarded as an alien; but when—

Any British subject has, before the fourth day of July, one thousand eight hundred and eighty-three, voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, within Canada, he may, at any time within two years after the said last-mentioned date, make a declaration that he is desirous of remaining a British subject, and upon such declaration (hereinafter referred to as a declaration of British nationality) being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject, within Canada, with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed, within Canada, to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

(2) Such declaration of British nationality may be made, and the oath of allegiance be taken, before any of the persons following, that is to say:

(*a*) If the declarant is in the United Kingdom, in the presence of a justice of the peace;

(*b*) If elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, or of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose;

(*c*) If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty. (44 V., c. 13, s. 9.)

NATURALIZATION.

8. Any alien who, within such limited time before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as is allowed by order or regulation of the Governor in Council, has resided in Canada for a term of not less than three years, or has been in the service of the government of Canada or of any of the Provinces of Canada, or of two or more of such governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada or to serve under the government of Canada or of the government of one of the Provinces of Canada, or two or more of such governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in the Form A in the schedule to this act, or to the like effect, and apply for a certificate in the Form B in said schedule. (44 V., c. 13, s. 10.)

9. Every such oath shall be taken and subscribed by such alien, and may be administered to him before any of the following persons, that

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is to say: A judge of a court of record in Canada, a commissioner authorized to administer oaths in any court of record in Canada, a commissioner authorized by the Governor-General to take oaths under resides, a notary public, a stipendiary magistrate or a police magistrate. (44 V., c. 13, s. 11).

10. The alien shall adduce, in support of such application, such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oaths aforesaid requires; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in the form B in the schedule to this act, or to the like effect. (44 V., c. 13, s. 12.)

11.[a] Such certificate shall be presented—

In Ontario, to the court of general sessions of the peace of the county within the jurisdiction of which the alien resides, or to the court of assize and nisi prius during its sitting in such county;

In Quebec, to the circuit court in and for the circuit within the jurisdiction of which the alien resides;

In Nova Scotia, to the supreme court during its sittings in the county within the jurisdiction of which the alien resides, or to the county court of such county;

In New Brunswick, to the supreme court or the court of assize and nisi prius during its sittings in the county within the jurisdiction of which the alien resides, or to the county court of such county;

In British Columbia, to the supreme court of British Columbia, during its sittings in the electoral district within the jurisdiction of which the alien resides, or to the court of assize and nisi prius during its sittings in such electoral district, or to the county court of such electoral district;

In Manitoba, to the court of queen's bench during its sittings in the county within the jurisdiction of which the alien resides, or to the court of assize and nisi prius during its sittings in such county, or to the county court of such county;

In Prince Edward Island, to the supreme court of judicature during its sittings in the county within which the alien resides, or to the court of assize and nisi pruis during its sittings in such county, or to the county court of such county:

Such presentation shall be made in open court, on the first day of some general sitting of such court; and thereupon such court shall cause the same to be openly read in court; and, if during such sitting, the facts mentioned in such certificate are not controverted, or any other valid objection made to the naturalization of such alien, such court, on the last day of such sitting, shall direct that such certificate shall be filed of record in the court. (44 V., c. 13, s. 13.)

12. In the Northwest Territories[a] and in the district of Keewatin, such certificate shall be presented to such authorities or persons as are prescribed by order or regulation of the governor in council, and thereupon such authority or person shall take such proceedings with respect to such certificate, and shall cause the same to be filed of record, in such way as is prescribed by such order or regulation. (44 V., c. 13, s. 14.)

13. The alien shall, after the filing of such certificate, be entitled, under the seal of the court, if such certificate has been presented to a

[a See infra, 3 Edward VII, ch. 38.]

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court, to a certificate of naturalization in the form C in the schedule to this act, or to the like effect; and if the certificate has been presented to an authority or person, as prescribed by order or regulation of the governor in council, the alien shall be entitled to receive, from such authority or person, a certificate of naturalization, authenticated as is prescribed by such order or regulation. (44 V., c. 13, s. 15.)

14. The certificate granted to an alien who applies for naturalization on account of service under the government of Canada or of any province or of any two or more of such governments, as hereinbefore provided, shall be filed of record in the office of the secretary of state of Canada; and thereupon the governor in council may authorize the issue of a certificate of naturalization to such alien in the form D in the schedule of this act. (44 V., c. 13, s. 16.)

15. An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject within Canada—with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect. (44 V., c. 13, s. 17.)

16. A special certificate of naturalization may, in manner aforesaid, be granted to any person with respect to whose nationality, as a British subject, a doubt exists; and such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be deemed a British subject; and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject; and such special certificate may be in the form E in the schedule to this act, or to the like effect. (44 V., c. 13, s. 18.)

17. An alien naturalized previously to the fourth day of July, one thousand eight hundred and eighty-three, may apply for a certificate of naturalization under this act, and such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized. (44 V., c. 13, s. 19.)

18. A statutory alien may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization,[a] apply to the proper court or authority or person in that behalf for a certificate hereinafter referred to as a "certificate of readmission to British nationality," readmitting him to the status of a British subject within Canada; and such certificate may be in the form F in the schedule to this act, or to the like effect. (44 V., c. 13, s. 20.)

19. A statutory alien to whom a certificate of readmission to British nationality within Canada has been granted, shall, from the date of the certificate of readmission, but not in respect of any previous transaction, resume his position as a British subject within Canada—with this qualification, that within the limits of the foreign state of

[a See infra, 3 Edward VII, ch. 38.]

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which he became a subject, he shall not be deemed to be a British subject within Canada, unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty or convention to that effect. (44 V., c. 13, s. 23.)

20. When any foreign state has, before or after the fourth day of July, one thousand eight hundred and eighty-three, entered into a convention with Her Majesty to the effect that the subjects of that state who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign state, and when such convention, or the laws of such foreign state, require a residence in Canada of more than three years or a service under the government of Canada, or of any of the provinces of Canada, or of two or more of such governments, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects—an alien, being a subject of such foreign state, who desires to divest himself of his status as such subject, may, if at the time of taking the oath of residence or service, he has resided or served the length of time required by such convention, or by the laws of the foreign state, instead of taking the oath showing three years' residence or service, take an oath showing residence or service for the length of time required by such convention, or by the laws of the foreign state; and the certificate of naturalization granted to the alien under the foregoing provisions hereof shall state the period of residence or service sworn to:

2. Such certificate of naturalization shall likewise state the period of residence or service sworn to; and the statement in such certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever. (44 V., c. 13, s. 24.)

21. An alien who, either before or after the fourth day of July, one thousand eight hundred and eighty-three, has, whether under this act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign State with which a convention to the effect above mentioned has been entered into by Her Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign state, may take the oath of residence or service showing residence or service for the length of time required by such convention or by the laws of the foreign state, and apply for a certificate, or a second certificate, as the case may be, of naturalization under this act. 44 V., c. 13, s. 25.

STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

22. A married woman shall, within Canada, be deemed to be a subject of the state of which her husband is, for the time being, a subject. (44 V., c. 13, s. 26.)

23. A widow who is a natural-born British subject, and who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of readmission to British nationality, within Canada, as hereinbefore provided. (44 V., c. 13, s. 27.)

24. If the father, being a British subject, or the mother, being a British subject and a widow, becomes an alien in pursuance of this act, every child of such father or mother who, during infancy, has

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become resident in the country where the father or mother is naturalized and has, according to the laws of such country, become naturalized therein, shall, within Canada, be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject. (44 V., c. 13, s. 28.)

25. If the father, or the mother being a widow, has obtained a certificate of readmission to British nationality within Canada, every child of such father or mother who, during infancy, has become resident within Canada with such father or mother, shall be deemed to have resumed the position of a British subject within Canada, to all intents. (44 V., c. 13, s. 29.)

26. If the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother who, during infancy, has become resident with such father or mother within Canada, shall, within Canada, be deemed to be a naturalized British subject. (44 V., c. 13, s. 30.)

27. Nothing in this act contained shall deprive any married woman of any estate or interest in real or personal property to which she became entitled before the fourth day of July, one thousand eight hundred and eighty-three, or affect such estate or interest to her prejudice. (44 V., c. 13, s. 31.)

REGULATIONS.

28. The governor in council may, from time to time, make regulations respecting the following matters:

(*a*) The form and registration of declarations of British nationality;

(*b*) The form and registration of certificates of naturalization in Canada;

(*c*) The form and registration of certificates of readmission to British nationality within Canada;

(*d*) The form and registration of declarations of alienage;

(*e*) The transmission to Canada, for the purpose of registration or safe-keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this act, out of Canada, or of any copies of such declarations or certificates; also, of copies of entries contained in any register kept out of Canada in pursuance of or for the purpose of carrying the provisions of this act into effect;

(*f*) With the consent of the treasury board, the imposition and application of fees in respect of any registration authorized by this act to be made, and in respect of the making of any declaration or the granting of any certificate authorized by this act to be made or granted by this act;

(*g*) The persons by whom the oaths may be administered under this act;

(*h*) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested;

(*i*) The registration of such oaths;

(*j*) The persons by whom certified copies of such oaths may be given;

(*k*) The transmission to Canada, for the purpose of registration or safe-keeping, or of being produced as evidence, of any oaths taken

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in pursuance of this act out of Canada, or of any copies of such oaths; also, of copies of entries of such oaths contained in any register kept out of Canada, in pursuance of this act;

(*l*) The proof, in any legal proceeding, of such oaths;

(*m*) With the consent of the treasury board, the imposition and application of fees in respect of the administration or registration of any such oath. (44 V., c. 13, s. 32, *part.*)

29. Any regulation made by the governor in council under this act shall be deemed to be within the powers conferred by this act, and shall be of the same force as if it had been enacted here. (44 V., c. 13, s. 32, part.)

EVIDENCE.

30. Any declaration authorized to be made under this act may be proved in any legal proceeding, by the production of the original declaration, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the Queen's privy council for Canada, or by any person authorized by regulation of the governor in council to give certified copies of such declaration; and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned. (44 V., c. 13, s. 33.)

31. A certificate of naturalization, or of readmission to British nationality, may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the Queen's privy council for Canada, or by any person authorized by regulation of the governor in council to give certified copies of such certificate; and the statement of the period of residence or service in a certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever. (44 V., c. 13, s. 34.)

32. Entries in any register authorized to be made in pursuance of this act may be proved by such copies and certified in such manner as is directed by regulation of the governor in council, by the clerk or acting clerk of the Queen's privy council for Canada, or by the secretary of state; and the copies of such entries shall be evidence of any matters by this act or by any regulation of the governor in council authorized to be inserted in the register. (44 V., c. 13, s. 35.)

33. A copy of any certificate of naturalization may be registered in the land registry office of any county or district or registration division within Canada, and a copy of such registry, certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever. (44 V., c. 13, s. 21.)

GENERAL PROVISIONS.

34. The governor in council may, from time to time, appoint commissioners to take and administer oaths under this act. (44 V., c. 13, s. 44.)

35. If any British subject has, in pursuance of this act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien. (44 V., c. 13, s. 37.)

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36. The clerk of the court by which the certificate of naturalization is issued shall, for all services and filings in connection with such certificate, be entitled to receive, from the person naturalized, the sum of twenty-five cents, and no more; and no further or other fee shall be payable for or in respect of such certificate:

(2) The registrar shall, for recording a certificate of naturalization, be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same, and no more. (44 V., c. 13, s. 22.)

37. Every person who, being by birth an alien, had, on or before the fourth day of July, one thousand eight hundred and eighty-three, become entitled to the privileges of British birth, within any part of Canada, by virtue of any general or special act of naturalization in force in such part of Canada, shall hereafter be entitled to all the privileges by this act conferred on persons naturalized under this act. (44 V., c. 13, s. 38.)

38. Nothing in this act contained shall repeal or in any manner affect the act of the legislature of Upper Canada, passed in the fifty-fourth year of the reign of His Majesty King George the Third, instituted "*An act to declare certain persons therein described aliens, and to vest their estates in His Majesty*," or the act of the legislature of the late Province of Canada, passed in the twenty-fourth year of Her Majesty's reign, chaptered forty-four and intituled "*An act respecting forfeited estates in Upper Canada*," or any proceedings had under the said acts. (44 V., c. 13, s. 39.)

39. Nothing in this act contained shall repeal or in any manner affect the act of the legislature of the late Province of Canada, passed in the session held in the fourth and fifth years of Her Majesty's reign, chaptered seven, intituled "*An act to secure to and confer upon certain inhabitants of this province, the civil and political rights of natural-born British subjects*," or the first, second, or third sections of the act of the said legislature, passed in the twelfth year of Her Majesty's reign, chapter one hundred and ninety-seven, intituled "*An act to repeal a certain act therein mentioned and to make better provision for the naturalization of aliens*," or impair or affect the naturalization of any person naturalized under the said acts, or either of them, or any rights acquired by such person or by any other person by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such persons respectively. (44 V., c. 13, s. 40.)

40. Every person who, being by birth an alien, did, prior to the first day of January, one thousand eight hundred and sixty-eight, take the oaths of residence and allegiance required by the laws respecting naturalization then in force in that one of the provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be admitted to all the rights and privileges of a natural-born British subject conferred upon naturalized persons by this act; and the certificate of the judge, magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his having taken them; or he may take and subscribe the oath in the form G in the schedule to this act before some judge, justice, or person authorized to administer the oaths of residence and allegiance

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under the act, in the county or district in which he resides. (44 V., c. 13, s. 41).

41. All aliens who had their settled place of abode in either of the late Provinces of Upper Canada or Lower Canada, or Canada, or in Nova Scotia or New Brunsswick, on or before the first day of July, one thousand eight hundred and sixty-seven, or in Rupert's Land or the North-West Territories on or before the fifteenth day of July, one thousand eight hundred and seventy, or in British Columbia on or before the twentieth day of July, one thousand eight hundred and seventy-one, or in Prince Edward Island on or before the first day of July, one thousand eight hundred and seventy-three, and who are still residents in Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges of British birth within Canada as if they had been natural-born subjects of Her Majesty; but no such person, being a male, shall be entitled to the benefit of this act, unless he takes the oath of allegiance in the Form A, and of residence in the Form H, in the schedule to this act, before some justice of the peace or other person authorized to administer oaths under this act. (44 V., c. 13, s. 42.)

42. The oaths taken under the next preceding section shall be filed of record, as follows: If the person making them resides in the Province of Ontario, with the clerk of the peace of the county in which he resides; if he resides in the Province of Quebec with the clerk of the circuit court of the circuit within which he resides; if he resides in Nova Scotia, with the prothonotary of the supreme court; and if he resides in New Brunswick, with the clerk of the supreme court; if he resides in British Columbia, with the clerk of the supreme court of British Columbia; if he resides in Prince Edward Island, with the clerk of the supreme court of judicature; if he resides in Manitoba, with the clerk of the court of Queen's Bench, or with the clerk of the county court of the county in which he resides; if he resides in the North West Territories or in the District of Keewatin, with such person or authority as is prescribed by order or regulation of the governor in council.

2. Upon the oath being so filed, the person making it shall be entitled to the benefit of this act and of the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate from the person with whom the oaths have been filed, in the Form I in the schedule to this act, or to the like effect; and the production of such certificate shall be *prima facie* evidence of his naturalization under this act, and that he is entitled to and enjoys all the rights and privileges of a British subject. (44 V., c. 13, s. 43).

43. No alien shall be naturalized within Canada, except under the provisions of this act. (44 V., c. 13, s. 46.)

PENALTY FOR FALSE SWEARING.

44. Every person who wilfully swears falsely, or makes any false affirmation under this act, shall, on conviction thereof, in addition to any other punishment authorized by law, forfeit all the privileges or advantages which he would otherwise, by making such oath or affirmation, have been entitled to under this act; but the rights of

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other persons, in respect of any property or estate derived from or held under him, shall not thereby be prejudiced, unless such persons were cognizant of the false swearing or the making of a false affirmation at the time the title by which they claim to hold under him was created. (44 V., c. 13, s. 45, *part.*)

SCHEDULE.[a]

A.

Oath of residence.

I, A. B., do swear (or, being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of —— years preceding this date I have resided three (or five, as the case may be) years in the Dominion of Canada with intent to settle therein, without having been, during such three years (or five years, as the case may be), a stated resident in any foreign country. So help me God.

Sworn before me at —— on the —— day of ———.

Oath of service.

I, A. B., do swear (or, being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of —— years preceding this date, I have been in the service of the Government of Canada (or of the government of the province of ———, in Canada, or, as the case may be) for the term of three years, and I intend, when naturalized, to reside in Canada (or to serve under the government of ———, as the case may be).

Sworn before me at —— on the —— day of ———.

A. B.

Oath of allegiance.[b]

I, A. B., do sincerely promise and swear (or, being a person allowed by law to affirm in judicial cases, do affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria (or reigning sovereign for the time being) as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against her person, crown, and dignity, and that I will do my utmost endeavor to disclose and make known to Her Majesty, her heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear (or affirm) without any equivocation, mental evasion, or secret reservation. So help me God.

Sworn before me at —— this —— day of ———.

A. B.

B.

Certificate.

I, C. D. (name and description of the person before whom the oaths have been taken), do certify that A. B., an alien, on the —— day of ———, subscribed and took, before me, the oaths (or affirmations) of residence and allegiance (or service and allegiance, as the case may be) authorized by the eighth section of "the naturalization act," and therein swore (or affirmed) to a residence in Canada (or service, &c.), of —— years; that I have reason to believe, and do believe, that the said A. B., within the period of —— years preceding the said day, has been a resident within Canada for (three or five, as the case may be) years (or has been in the service of the government of Canada for three years, or, as the case may be), that the said A. B. is a person of good character, and

[a See, infra, Regulations and Forms of 1903.]
[b See, infra, 4-5 Edward VII, ch. 25.]

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that there exists, to my knowledge, no reason why the said A. B. should not be granted all the rights and capacities of a natural-born British subject.

Dated at ———, the —— day of ———.

C. D.

If the above certificate is applied for by a person, with respect to whose nationality a doubt exists, and who desires a special certificate of naturalization under section sixteen, add the following:

"I further certify that the said A. B. has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section sixteen of said act."

If the above certificate is applied for by a person previously a natural-born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.

C.

Certificate of naturalization.

Dominion of Canada, Province of ———.

In the (name of court):

Whereas A. B., of, &c. (describing him as formerly of such a place, in such a foreign country, and now of such a place in Canada, and adding his occupation or addition), has complied with the several requirements of "the naturalization act," and has duly resided in Canada for the period of (three or five, as the case may be) years; and whereas the certificate granted to the said A. B., under the tenth section of the said act, has been duly read in open court, and thereupon, by order of the said court, has been filed of record in the same, pursuant to the said act (¶), this is, therefore, to certify to all whom it may concern that, under and by virtue of the said act, A. B. has become naturalized as a British subject (§) and is, within Canada, entitled to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject (or citizen), previous to the date hereof, be deemed to be a British subject, unless he has ceased to be a subject (or citizen) of that state, in pursuance of the laws thereof or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this —— day of ———, one thousand eight hundred and ———.

E. F.,

Judge, Clerk (or other proper officer of the Court).

This form may be altered so as to apply to the North-West Territories or District of Keewatin.

D.

Certificate of Naturalization to a person after service under Government.

Whereas A. B., of (describing him, and adding his occupation or addition), has complied with the several requirements of "the naturalization act," and has been in the service of the Government of Canada (or as the case may be) for a term of not less than three years, and intends, when naturalized, to reside in Canada (or, to serve under the Government of ———, as the case may be): and whereas the certificate granted to the said A. B., under the tenth section of the said act, has been duly filed of record in the office of Her Majesty's Secretary of State of Canada, pursuant to the said act; and whereas the Governor in council has duly authorized the issue of this certificate of naturalization: This is, therefore, to certify to all whom it may concern that under and by virtue of the said act, the said A. B. has become naturalized as a British subject and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign state of which he was the subject (or citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (or citizen) of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under my hand, this ——— day of ———.

———, ———,

Secretary of State of Canada.

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E.

Special certificate of naturalization to a person with respect to whose nationality a doubt exists.

Follow form C down to the sign ¶—then add:

And whereas the said A. B. alleges that he is a person with respect to whose nationality as a British subject a doubt exists, and this certificate is issued for the purpose of quieting such doubts, and the application of the said A. B. therefor and the issuing thereof shall not be deemed to be any admission that the said A. B. was not heretofore a British subject—(then continue the rest of form C to the end).

Form D to be altered in a similar way when necessary.

F.

Certificate of readmission to British nationality.

Formal part as in form C.

Whereas A. B., of (describing him, as in form C), who alleges that he was a natural-born British subject, and that he became an alien by being naturalized as a subject (or citizen) of ——— has complied with the several requirements of "the naturalization act," and has duly resided in Canada for the period of three (or five, as the case may be) years;[a] and whereas the certificate granted to the said A. B., under the tenth section of the said act, has been duly read in open court, and thereupon, by order of the said court, has been filed of record in the same, pursuant to the said act: This is, therefore, to certify to all whom it may concern that, under and by virtue of the said act, the said A. B., from the date of this certificate, but not in respect of any previous transaction, is readmitted to the status of a British subject—(then follow form C from the sign § to the end).

Form D to be altered in a similar way when necessary.

Where the applicant is a widow, the form shall be modified accordingly and recite that she became an alien by marriage with her late husband, L. M., a subject (or citizen) of

G.

I, A. B., of ———, do swear (or affirm) that on or about the —— day of ———, one thousand eight hundred and ———, at ———, in the (county, or as the case may be), of ———, in the province of ———, I did take and subscribe before (a judge, magistrate, or other person, naming him) the oaths (or affirmations) of residence and allegiance required by the laws respecting the naturalization of aliens then in force in the said province. So help me God.

A. B.

Sworn to before me at ———, on the —— day of ———, 18——.

H.

I, A. B., of ———, do swear (or affirm) that I had a settled place of abode in (Upper Canada, Lower Canada, Nova Scotia, or New Brunswick, as the case may be), on the first day of July, A. D. 1867 (or in Rupert's Land or the Northwest Territories, on the fifteenth day of July, A. D. 1870), (or in British Columbia, on the twentieth day of July, A. D. 1871) (or in Prince Edward Island, on the first day of July, A. D. 1873), and I resided therein with intent to settle therein; and I have continuously since resided in the Dominion of Canada. So help me God.

A. B.

Sworn before me at ———, on the —— day of ———, 18——.

I.

I hereby certify that A. B., of ———, has filed with me as (clerk of the peace, ———, or as the case may be) the oath (or affirmation) of which the following is a copy:

[a See infra, 3 Edward VII, ch. 38.]

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(Copy the oath or affirmation.)

This certificate is issued pursuant to the forty-second section of "the naturalization act," and is to certify to all to whom it may concern that—

(Follow Form C.)

44 V., c. 13, sch.

[2 EDWARD VII.]

CHAP. 23.—AN ACT TO AMEND THE NATURALIZATION ACT.

[Assented to 15th May, 1902.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. For the purposes of the naturalization act, chapter 113 of the Revised Statutes, and of this act, the clerk of the peace of any county in Ontario shall be deemed to be the "clerk" of the general sessions of the peace of that county, and the prothonotary of the supreme court of Nova Scotia for any county shall be deemed to be the "clerk" of that court in relation to matters arising in or dealt with in that county.

2. The clerk of every court which, by or under the naturalization act, is required to grant such certificates shall, on or before the fifteenth days of January and July in each and every year, make a return to the secretary of state of Canada of all persons to whom certificates of naturalization or of readmission to British nationality have been granted by such court, or who have taken the oath and been granted the certificates referred to in sections 41 and 42 of the said act for the half years ending, respectively, with the thirty-first day of December and the thirtieth day of June next preceding the date of such returns.

3. Such returns shall set forth with respect to each such person his name, residence, and addition, and his former residence and nationality, the nature of the certificate granted or oath taken, the date when and the place where the same were granted or taken, and any other particulars which the governor in council may require, and shall be accompanied by certified copies of each certificate granted during the half year.

4. The clerk of every such court, and every officer or person who is the legal custodian of the records of any certificates of naturalization or of readmission to British nationality heretofore granted under any act of the Parliament of Canada, shall, as soon as possible after the passing of this act, and not later than the first day of January, nineteen hundred and three, make a return to the secretary of state of Canada setting forth with respect to each such certificate the name, residence, and addition, and former residence and nationality, as shown by such records, of the person to whom it was granted, the nature of the certificate, its place and date of issue, and the name of the court by which it was granted.

5. All returns made pursuant to this act and all copies of certificates received with any such returns shall remain of record in the department of the secretary of state, and there shall be prepared

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and kept in that department two alphabetical lists of the persons appearing from such returns, and from the records of proceedings under section 14 of the said act, to have been naturalized or readmitted to British nationality, which lists shall set forth in tabulated form all the particulars required to be given in such returns.

(2) One of such lists shall contain the names of persons heretofore and the other those of persons hereafter naturalized or readmitted to British nationality.[a]

6. Any person shall be entitled during the usual office hours of the said department, and upon payment of such fees as may be prescribed by the governor in council, to have a search made of such lists and of the returns and copies of certificates of record under this act, and the secretary of state, upon request, and upon payment of such fees as are so prescribed, shall issue such certificates as to the details shown by such lists or such return with respect to any person whose name appears therein as having been naturalized or readmitted to British nationality, and furnish certified copies of or extracts from any matter of record in the department under this act.

7. Any person who refuses or neglects to make any return required of him by this act within the time limited therefor is guilty of an offence and liable upon summary conviction to a penalty of fifty dollars.

[8 Edward VII.]

CHAP. 38.—AN ACT TO AMEND THE ACTS RELATING TO NATURALIZATION AND ALIENS.

[Assented to 13th August, 1903.]

His Majesty, by and with the advice and consent of the senate and house of commons of Canada, enacts as follows:

1. Section 11 of the naturalization act, chapter 113 of the Revised Statutes, is hereby repealed and the following substituted therefor:

11. Such certificate shall be presented—

In Ontario, to the court of general sessions of the peace of the county within the jurisdiction of which the alien resides, or to the court of assize and *nisi prius* during its sitting in such county;

In Quebec, to the circuit court in and for the district within the jurisdiction of which the alien resides;[b]

In Nova Scotia, to the supreme court, during its sittings in the county within which the alien resides, or to the county court having jurisdiction in such county;

In New Brunswick, to the supreme court during its sittings in the county within which the alien resides, or to the circuit court, as the case may be, in such county, or to the county court having jurisdiction in such county;

In British Columbia, to the supreme court of British Columbia, during its sittings in the electoral district within the jurisdiction of which the alien resides, or to the court of assize and *nisi prius* during its sittings in such electoral district, or to the county court of such electoral district;

In Manitoba, to the court of King's bench during its sittings in the judicial district within which the alien resides, or if the alien resides in the eastern judicial district, to a judge of the court of King's bench sitting in court; or to the court of assize and *nisi prius* during its sittings in the judicial district

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[a See infra, 3 Edward VII, ch. 38.]
[b See infra, 4 Edward VII, ch. 25.]

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within which the alien resides; or to the county court of the county court division within which the alien resides;[a]

In Prince Edward Island, to the supreme court of judicature during its sittings in the county within which the alien resides, or to the court of assize and *nisi prius* during its sittings in such county, or to the county court of such county;

In the Northwest Territories, to a judge of the supreme court of the Northwest Territories sitting in chambers in the judicial district within which the alien resides;

In the Yukon Territory, to the territorial court during its sittings in the circuit within the jurisdiction of which the alien resides.

2. The following section is hereby added to the naturalization act as section 11A thereof:

11A. When it is intended to present a certificate, under section 11 of this act, on behalf of any alien, notice in writing of such intention, stating the name, residence and occupation or addition of such alien, shall be given to the clerk of the court at least three weeks before the sittings thereof; and the clerk shall post up in a conspicuous place in his office three weeks before such sittings, and keep posted there until such sittings are ended, a list showing the names, residences, and occupations or additions of all aliens as to whom due notice has been received by him of such intention.

(2) At any time after the filing of any such notice and previous to the sittings of the court any person objecting to the naturalization of the alien may file in the office of the clerk an opposition in which shall be stated the grounds of his objections.

(3) Presentation of such certificates shall be made in open court and on the first day of some general sittings of the court, and thereupon the judge shall cause the particulars of all such certificates to be openly announced in court, the name, residence, and occupation or addition of each applicant for naturalization being stated. Where no opposition has been filed to the naturalization of an applicant, and no objection thereto is offered during the sittings, the court on the last day of the sittings shall direct that the certificate of the applicant be filed on record in the court. If such opposition has been filed or objection offered the court shall hear and determine the same in a summary way and shall make such direction or order in the premises as the justice of the case requires.

(4) In this section the expression "clerk" has the same meaning as it has in the act to amend the naturalization act, chapter 23 of the statutes of 1902.

(5) In the Northwest Territories the foregoing provisions of this section shall not apply, but in lieu thereof the procedure shall be as follows:

(*a*) On the presentation of the certificate the judge shall cause a copy thereof to be posted up in a conspicuous place in the court-house in which he holds his chamber for at least two weeks.

(*b*) At any time after the said copy is so posted any one may file with the clerk of the court where the said copy has been posted a written notice of objection to the certificate of naturalization being granted, stating the grounds of such objection. On the Wednesday following the expiration of the two weeks for which the copy is required to be posted the judge shall hold a sittings in chambers, at which, if no objection has been raised, he shall direct the issue of a certificate of naturalization to the applicant; and if objection has been raised, he shall decide such objection in a summary way, and the judge shall have power to adjourn the said hearing from time to time.[b]

3. Section 12 of the naturalization act is hereby amended by striking out the words "in the Northwest Territories and."

4. Section 18 of the naturalization act is hereby amended by adding thereto after the word "naturalization" in the third line thereof "except that residence in Canada for not less than three months shall be sufficient."

5. Form F in the schedule to the naturalization act is hereby amended by striking out therefrom the words "three (*or* five *as the*

[a See infra, 4 Edward VII, ch. 25.]
[b See infra, 4-5 Edward VII, ch. 25.

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case may be) years," in the sixth line, and substituting therefor the words "at least three months."

6. Section 5 of chapter 23 of the statutes of 1902 is hereby amended by adding thereto the following as subsection 3:

"3. The fees payable for the preparation and transmission of returns made pursuant to this act may, from time to time, be fixed by the governor in council."

[4 EDWARD VII.]

CHAP. 25.—AN ACT TO AMEND THE ACTS RELATING TO NATURALIZATION AND ALIENS.

[Assented to 10th August, 1904.]

Whereas doubts have arisen as to the jurisdiction under the naturalization act, as amended by chapter 38 of the statutes of 1903, of circuit courts in and for territorial divisions of districts or counties in the Province of Quebec, and it is expedient to remove such doubts and to make valid the exercise of such jurisdiction since the last-mentioned act was passed: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Section 11 of the naturalization act, chapter 113 of the Revised Statutes, as that section is enacted by section 1 of chapter 38 of the statutes of 1903, is amended by striking out the sixth and seventh lines thereof and substituting the following therefor: "In Quebec, to any circuit court within the territorial limits of the jurisdiction of which the alien resides."

(2) The said section is further amended by striking out the twentieth to the twenty-sixth lines, both included, and substituting the following therefor:

In Manitoba, to the county court having jurisdiction where the alien resides, or if there is no county court having jurisdiction there, then to the county court of the county nearest to his residence or the county court the place of holding which is nearest to his residence.

2. The circuit courts in and for territorial divisions of districts and counties in the Province of Quebec are hereby declared to have had jurisdiction under the naturalization act, as so amended, on and since the thirteenth day of August, 1903, as if the said section 11 had been enacted by chapter 38 of the statutes of 1903 in the form of that section as amended by this act: Provided that this section shall not affect any action or proceeding now pending.

[4-5 Edward VII.]

CHAP. 25.—AN ACT TO AMEND THE ACTS RESPECTING NATURALIZATION AND ALIENS.

[Assented to 20th July, 1905.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Subsection 5 of section 11A of the naturalization act, as the said

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section is enacted by section 2 of chapter 38 of the statutes of 1903, is hereby repealed and the following substituted therefor:

5. In the Northwest Territories the foregoing provisions of this section shall not apply, but the procedure shall be as follows:

(*a*) Before its presentation to the judge the certificate shall be filed in the office of the clerk of the supreme court for the judicial district within which the alien resides, unless he resides within a portion of such district assigned to a deputy clerk, in which case it shall be filed in the office of such deputy clerk;

(*b*) A copy of the certificate shall thereupon be posted up in a conspicuous place in the office of the clerk of the court, or of the deputy clerk, as the case may be, and shall remain so posted up for a period of not less than two weeks;

(c) At any time after such copy is first so posted up any one may file with the clerk of the court, or with the deputy clerk, as the case may be, a written notice of objection to the certificate of naturalization being granted, stating the grounds of such objection;

(*d*) Not later than three weeks after the certificate is so filed the clerk of the court, or the deputy clerk, as the case may be, shall present to the judge, or transmit to him by registered letter, the certificate and all notices of objection filed with him, if any, with a certificate, under his hand and the seal of the court, that a copy of the certificate has been duly posted up in his office as above required, and, if no notice of objection has been filed with him, that such is the case;

(*e*) Within one week following the receipt by the judge of the cerificate and such other material he shall hold a sitting in chambers, at which, if no notice of objection has been filed, and if the certificate appears to be regular and sufficient, he shall direct the issue to the alien of a certificate of naturalization, and if any notice of objection has been received, or if the certificate is defective or otherwise open to objection, he shall decide such objection in a summary way, and shall make such direction or order in the premises as the justice of the case requires;

(*f*) The judge shall have power to adjourn the hearing of any such case from time to time.

2. Form A in the schedule to chapter 113 of the Revised Statutes of Canada is hereby amended by repealing the form of *oath of allegiance* as therein set forth and substituting the following therefor:

THE NATURALIZATION ACT.

Oath of allegiance.

"I, A. B., formerly of (former place of residence to be stated here), in (country of origin to be stated here), and known there by the name of (name and surname of alien in his country of origin to be stated here), and now residing at (place of residence in Canada and occupation to be stated here), do sincerely promise and swear (or, being a person allowed by law to affirm in judicial cases, do affirm) that I will be faithful and bear true allegiance to His Majesty King Edward VII (or reigning sovereign for the time being) as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against his person, crown, and dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, his heirs, or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against him or any of them; and all this I do swear (or affirm) without any equivocation, mental evasion, or secret reservation. So help me God.

A. B."

"Sworn before me, at ———, this —— day of ———.

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THE NATURALIZATION ACT REGULATIONS AND FORMS.

His excellency the governor-general in Council, in view of the amendments made to "the naturalization act," chapter 113 of the Revised Statutes of Canada, at the 3rd session of the 9th Parliament of Canada, and of the necessity for other reasons of certain changes in the existing regulations under the said act, is pleased to order that the said regulations shall be, and the same are hereby, rescinded and the following substitute therefor, namely:

SECTION 1. In view of the provisions of section 11*a* of the said act, as enacted by sections 2 and 5 of chapter 38 of the Statutes of 1903, Forms "C" and "F" in the schedule to the said act are amended so as to read as follows:

FORM C.—*The naturalization act.*

[Rev. Stats. Can., chapter 113, s. 13, and amendments thereto.]

CERTIFICATE OF NATURALIZATION.

Dominion of Canada, Province of ———.

In the ——— (name of court) Court of ———.

Whereas ——— ———, formerly of ——— (name of country), now of ———, in the province of ——, (occupation) ———, has complied with the several requirements of "the naturalization act," and has duly resided in Canada for the period of ———. And whereas particulars of the certificate granted to the said ——— ——— under the tenth section of the said act have been duly announced in court, and thereupon, by order of the said court, the said certificate has been filed of record in the same pursuant to the said act: This is therefore to certify to all whom it may concern that under and by virtue of the said act ——— ——— has become naturalized as a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject (or citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (or citizen) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this ——— day of ———, one thousand nine hundred and ——.

A. B.

Judge, Clerk (or other proper officer of the Court).

FORM F.—*The naturalization act.*

[Rev. Stats. Can., chapter 113, and amendments thereto.]

CERTIFICATE OF READMISSION TO BRITISH NATIONALITY.

Dominion of Canada, Province of ———.

In the ——— (name of court) Court of ———.

Whereas ——— ———, formerly of (name of country), now of ———, in the province of ———, (occupation) ———, who alleges that he was a natural-born British subject, and that he became an alien by being naturalized as a subject (or citizen) of ———, has complied with the several requirements of "the naturalization act," and has duly resided in Canada for the period of at least three months. And whereas particulars of the certificate granted to the said ——— ———, under the tenth section of the said act have been duly announced in court, and thereupon, by order of the said court, the said certificate has been filed of record in the same pursuant to the said act: This is therefore to certify to all whom it may concern, that under and by virtue of the said act the said ——— ——— from the date of this certificate, but not in respect of any previous transaction, is readmitted to the status of a British subject, and is,

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within Canada, entitled to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject (or citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (or citizen) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this ——— day of ———, one thousand nine hundred and ———.

A. B.,
Judge, Clerk (or other proper officer of the Court).

And also that under the authority of sections 28 and 29 of "the naturalization act," Form "B" be modified so as to read thus:

B.

THE NATURALIZATION ACT.

Certificate.

I, C. D. (Name and description of the person before whom the oaths have been taken) do certify that A. B., an alien (describing him as formerly of such a place, in such a foreign country, and now of such a place in Canada, and adding his occupation or addition), on the ——— day of ———, subscribed and took, before me, the oaths (or affirmations) of residence and allegiance (or service and allegiance, as the case may be) authorized by the eighth section of "The Naturalization Act," and therein swore (or affirmed) to a residence in Canada (or service, etc.) of ——— years; that I have reason to believe, and do believe, that the said A. B., within the period of years preceding the said day, has been a resident within Canada for (three or five, as the case may be) years (or has been in the service of the government of Canada for three years; or as the case may be) that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted all the rights and capacities of a natural born British subject.

Dated at ———, the ——— day of ———.

C. D.

If the above certificate is applied for by a person, with respect to whose nationality a doubt exists, and who desires a special certificate of naturalization under section sixteen, add the following:

"I further certify that the said A. B. has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section sixteen of said act."

If the above certificate is applied for by a person previously a natural born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.

Section 2. Certificates of naturalization in the Northwest Territories, issued pursuant to section 13 of the said act, may be in the following form, or to the like effect:

FORM C.

THE NATURALIZATION ACT.

[*Rev. Stats., Can., Chapter 113, and amendments thereto.*]

Certificate of naturalization.

Dominion of Canada, Northwest Territories.

In the supreme court of the Northwest Territories, before ——— ——— one of the judges of the said court sitting in chambers in the judicial district of ———.

Whereas ——— ———, formerly of ——— (name of country), now of ———, in the Northwest Territories of the Dominion of Canada ——— (occupation),

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has complied with the several requirements of "the naturalization act," and has duly resided in Canada for the period of ——— years;

And whereas the certificate granted to the said ——— ——— under the tenth section of the said act has been duly presented to the said judge sitting in chambers in the said judicial district;

And whereas a copy of such certificate has been duly posted in a conspicuous place in the court-house in which the said judge holds his chambers, and the said judge has directed the issue of a certificate of naturalization to the said ——— ———.

This is therefore to certify to all whom it may concern, that, under and by virtue of the said act ——— ——— has become naturalized as a British subject, and is, within Canada, entitld to all political and other rights, powers and privileges and is subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign State of which he was a subject (or citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (or citizen) of that State, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the supreme court of the Northwest Territories, judicial district of ———, this —— day of ———, one thousand nine hundred and ——.

A. B.

(*Judge, clerk, or other proper officer of the court*).

FORM F.

THE NATURALIZATION ACT.

[Rev. Stats. Can., chapter 113, and amendments thereto.]

Certificate of readmission to British nationality.

DOMINION OF CANADA, NORTHWEST TERRITORIES.

In the supreme court of the Northwest Territories before ——— ——— one of the judges of the said court, sitting in chambers in the judicial district of ——— whereas ——— ——— formerly of ——— (*name of country*) now of ——— in the Northwest Territories of the Dominion of Canada ——— (*occupation*) who alleges that he was a natural-born British subject, and that he became an alien by being naturalized as a subject (or citizen) of ———, has complied with the several requirements of "the naturalization act," and has duly resided in Canada for the period of at least three months; and whereas the certificate granted to the said ——— ——— under the tenth section of the said act has been duly presented to the said judge sitting in chambers in the said judicial district; and whereas a copy of such certificate has been duly posted in a conspicuous place in the court-house in which the judge holds his chambers and the said judge has directed the issue of a certificate of naturalization to the said ——— ———; this is therefore to certify to all whom it may concern that under and by virtue of the said act the said ——— ——— from the date of this certificate, but not in respect of any previous transaction, is readmitted to the status of a British subject, and is, within Canada, entitled to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification: That he shall not, when within the limits of the foreign State of which he was a subject (or citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (or citizen) of that State, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the supreme court of the Northwest Territories, judicial district of ———, this —— day of ——— one thousand nine hundred and ——.

A. B.

(*Judge, clerk, or other proper officer of the court.*)

SECTION 3. The time within which the three years' residence or service prescribed by section eight of the said act must be had is

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limited to five years immediately preceding the taking of the oaths or affirmations mentioned in the said section.

SECTION 4. The forms of declarations of alienage made in pursuance of the said act shall be respectively as follows:

THE NATURALIZATION ACT, CANADA.

Declaration of alienage by a naturalized British subject.

I, A. B., of ———, having been naturalized as a British subject on the —— of ——, 190—, do hereby, under the provisions of the order of the governor-general in council of the ———, and of the treaty between Great Britain and C. D., renounce my naturalization as a British subject and declare that it is my desire to resume my nationality as a subject (or citizen) of C. D.

[Signed] A. B.

Made and subscribed this ——— day of ———, 190—, before me.

[Signed] E. F.,
Justice of the Peace (or other official title.).

THE NATURALIZATION ACT, CANADA.

Declaration of alienage by a person born within British dominions but also a subject or citizen of a foreign state by the law thereof.

I, A. B., of ———, being held by the common law of Great Britain to be a natural-born subject of his Britannic Majesty by reason of my having been born within His Majesty's dominions, and being also held by the law of C. D., to have been at my birth, and to be still, a subject (or citizen) of C. D., hereby renounce my nationality as a British subject, and declare that it is my desire to be considered and treated as a subject (or citizen) of C. D.

[Signed] A. B.

Made and subscribed this ——— day of ———, 190—, before me.

[Signed] E. F.,
Justice of the Peace (or other official title).

THE NATURALIZATION ACT, CANADA.

Declaration of alienage by a person who is by origin a British subject.

I, A. B., of ——— ———, having been born out of His Britannic Majesty's dominions of a father being a British subject, do hereby renounce my nationality as a British subject.

[Signed] A. B.

Made and subscribed this ——— day of ———, 190—, before me.

[Signed] G. H.
Justice of the Peace (or other official title).

SECTION. 5. Every declaration, whether of alienage or British nationality, made in pursuance of the said act, shall be deposited and registered in the office of the secretary of state of Canada.

SECTION 6. The secretary of state of Canada, the under-secretary of state, or the deputy registrar general of Canada may give certified copies of any such declaration for the purposes mentioned in the said act.

SECTION 7. The oaths mentioned in sections forty-one and forty-two of the said act shall, if the person taking them resides in the Northwest Territories, be filed of record with a clerk of the supreme court of the Northwest Territories.

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SECTION 8. With the consent of the treasury board the following provision is made in regard to the imposition and application of fees:

Matter in which a fee may be taken.	Amount of fee.	How to be applied.
For taking a declaration, whether of alienage, or British naturalization.	$0.40	To the justice or other official taking declaration.
For administering the oath of allegiance.....	.40	To the justice, commissioner, notary, stipendiary, or other magistrate administering the oath.
For registration of declaration, with or without the oath of allegiance	1.00	Consolidated revenue of Canada.
For certified copy of declaration, with or without an oath.	1.00	Consolidated revenue of Canada.

O. C., 21st December, 1903.

JOSEPH POPE,
Under-Secretary of State.

CAPE OF GOOD HOPE.

[Enclosure in despatch from Mr. Lay, consul-general, Cape Town, September 28, 1906.]

AUGUST 22, 1883.

No. 2—1883.]

ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO ALIENS.[a]

Whereas it is expedient to consolidate and amend the law relating to the legal condition of aliens: Be it enacted by the governor of the Cape of Good Hope, with the advice and consent of the legislative council and house of assembly thereof, as follows:

1. The laws mentioned in the first schedule to this act shall be and are hereby wholly repealed: *Provided*, That such repeal shall not, as to any time before the passing of this act, affect (1) any right acquired or thing done; (2) any liability accrued or accruing; (3) any penalty or other punishment incurred, or to be incurred, in respect of any offence committed; (4) the institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, or punishment as aforesaid.

2. Any person of alien birth, may purchase, acquire, own, and dispose of immovable property in this colony in like manner as natural-born subjects of Her Majesty: *Provided*, That this section shall not qualify an alien for any office[b] or any franchise which such alien does not now by law possess, nor entitle an alien to any right or privilege except such rights and privileges in respect of immovable property as are hereby expressly given to him.

3. Any alien now residing, or who may hereafter reside, within this colony, may make application, addressed to the colonial secretary, for letters of naturalization; and every such application shall be as nearly as is material in the form set forth in the second schedule.

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[a] Amended by act 35, 1889. Extended by proclamation No. 246, of 1883, to Tembuland; by proclamation No. 247, of 1883, to Transkei and Griqualand East, and by proclamation No. 248, of 1883, to Port St. Johns.

[b] Alien can not be registered as voter. Section 10, constitution ordinance. Can not be elected member of house of assembly, section 47 ibid., or of Legislative Council, section 23 ibid. Can not be elected member of Municipality, act 45 of 1882, section 16.

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4. The governor may (if he think fit) grant letters of naturalization in this colony to any alien, or to any person who has been naturalized as a British subject elsewhere than in this colony, who shall apply for naturalization and conform to the provisions of this act: *Provided*, That no letters of naturalization shall be granted until[a] there be delivered to the colonial secretary a certificate signed by some resident magistrate, justice of the peace, or field cornet to the effect that the applicant is known to the person so signing, and that to the best of such person's belief and knowledge the applicant is a person of good repute who has either never been convicted of and sentenced for treason, murder, culpable homicide, rape, theft, fraud, perjury, or forgery, or, if he has been so convicted and sentenced, that he has received a free pardon.

5. Any person resident in this colony who has previously obtained a certificate of naturalization as a British subject as aforesaid may obtain letters of naturalization under the provisions of this act if he shall submit such certificate and make an application to the colonial secretary, stating in the said application (1) that he is the person named in such certificate, (2) that the certificate has been obtained without any fraud or intentionally false statement, and (3) that the signature and seal (if any) thereto are to the best of his knowledge and belief genuine.

6. Every alien, being a male, to whom the governor may grant letters of naturalization, shall before delivery of such letters to him make and subscribe before a justice of the peace a declaration of allegiance in the form contained in the third schedule, which declaration shall be of the same force and effect as an oath of allegiance.

7. An alien to whom letters of naturalization have been granted shall in this colony be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in this colony.

8. The following persons shall be deemed and taken to be naturalized, and shall have all the rights and privileges of natural-born subjects of Her Majesty in this colony: (1) Any alien woman in this colony already married or who shall hereafter be married to any such natural-born or naturalized subject; (2) all minor children alien born of any alien parent who shall be or become naturalized under this or any other act, and which children shall either be within this colony at the time of the naturalization of their parent [or shall become resident] in this colony during minority.

9. A return of persons to whom letters of naturalization shall have been granted under this act shall be published in the Gazette half-yearly, in the months of January and July, and such returns shall show (1) name of such persons in full, (2) their birthplace, (3) occupation, (4) residence in the colony, (5) date of the issue of letters.

10. If any person shall willfully make any false statement in any application made under the provisions of this act for the purpose of obtaining letters of naturalization, he shall, upon conviction, incur the same penalties as are by law provided against persons convicted of willful and corrupt perjury. And in case letters of naturalization shall have been granted, such letters shall be void.

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[a] Printed as amended by act 35, 1889, section 2.

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11. Every person obtaining letters of naturalization under this act shall pay for the same a fee, to be collected by means of stamps, [a] of two shillings and sixpence.

12. The colonial secretary shall cause a register to be made and kept of letters of naturalization heretofore granted or hereafter granted under this act, and shall, upon the application of any person, and upon payment of a fee of one shilling in respect of every name of any person upon, or supposed to be upon, the register.

A certificate under the hand of the colonial secretary authenticating the fact of the issue of letters of naturalization to any person whose name appears upon the said register may, at the discretion of the colonial secretary, be issued upon payment by means of stamps of a fee of five shillings. Every such certificate shall be received as evidence of the facts therein stated.

13. Every letter of naturalization and every such certificate as aforesaid shall be admissible in evidence without proof of the signature or seal authenticating the same and shall be prima facie evidence of the person named therein being duly naturalized, and of the signature or seal authenticating the same and of the official character of the persons appearing to have signed the same.

14. This act may be cited as the "Aliens' naturalization act, 1883."

THE FIRST SCHEDULE.

Laws repealed.

Number.	Year.	Title of act.
8.....	1856	For enabling persons alien born to hold fixed property in this colony.
37.....	1861	For facilitating the naturalization of aliens.
21.....	1868	For further facilitating the naturalization of certain aliens.

THE SECOND SCHEDULE.

Form of application for letters of naturalization to the colonial secretary of the Cape of Good Hope.

I do hereby apply for letters of naturalization in the colony of the Cape of Good Hope, and I declare that the answers to the questions hereunder given are true and correct:

1. Name of the applicant (in full).
2. Birthplace (state fully the name of the place and the country in which the place is situated).
3. Age next birthday.
4. Occupation.
5. Place of residence in the colony.
6. Length of time during which the applicant has resided in the colony.
7. Does the applicant intend, when naturalized, to reside in this colony?
8. Have you ever been convicted and sentenced for any of the following crimes: [b] Treason, murder, culpable homicide, rape, theft, fraud, perjury, or forgery; or, if so, have you received a free pardon?

Dated at ——— the —— day of ———, 18—.

(*Signature of Applicant.*)

[a] Printed as amended by section 3, of act No. 35, 1889.
[b] Printed as amended by section 1 of act No. 35, 1889.

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THE THIRD SCHEDULE.

Declaration of allegiance.

I, A B, of ———, do sincerely promise that I will be faithful and bear true alleigance to Her Majesty Queen Victoria as lawful sovereign of the United Kingdom of Great Britain and Ireland and of the colony of the Cape of Good Hope, and to her heirs and successors according to law.

Declared this —— day of ———, 18—.

Before me:

———— ————,
Justice of the Peace.

HONGKONG.

Mr. Wilder, consul-general, Hongkong, to the Assistant Secretary of State, August 28, 1906.

AMERICAN CONSULATE-GENERAL,
Hongkong, August 28, 1906.

SIR: * * * The law of the colony of Hongkong is identical with the law of England on the subject, as the only citizens of the colony are British subjects, with the following addition:

The colonial government has the power to grant certificates of naturalization to foreigners desiring to become naturalized British subjects, if they have resided in Hongkong for five years and intend to reside here permanently, upon their taking an oath of allegiance to the British Crown. (See Hongkong ordinance No. 44 of 1902.) Such certificates, however, only grant protection to the naturalized person while in Hongkong, and are liable to revocation by the colonial government if obtained by misrepresentation.

I am, etc.,

AMOS P. WILDER, *Consul-General.*

[Enclosure.]

NO. 44 OF 1902.—AN ORDINANCE RELATING TO THE NATURALIZATION OF ALIENS.

[L S] HENRY A. BLAKE, *Governor.*

[9TH DECEMBER, 1902.]

Be it enacted by the governor of Hongkong, with the advice and consent of the legislative council thereof, as follows:

1. This ordinance may be cited as the naturalization ordinance, 1902.

2. Any alien who has continuously resided in Hongkong or been in the service of the Crown for a term of not less than five years immediately preceding his application, and who intends, if natural-

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ized, to reside permanently in Hongkong, may apply to the governor for a certificate of naturalization as a British subject in Hongkong.

3. The applicant shall adduce in support of his application such evidence of his residence or service and intention to reside as the governor may require, and the governor may, on consideration of the evidence adduced, grant or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.

4. Every such certificate shall contain the condition that the grantee shall continue to reside permanently in Hongkong, and that the certificate shall be determinable on the grantee ceasing so to reside. No certificate of naturalization shall be issued nor take effect until the applicant has taken the oath of allegiance.

5. Any alien who has been naturalized previously to the passing of this ordinance may apply to the governor for a certificate of naturalization under this ordinance, and it shall be lawful for the governor to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in Hongkong.

6. Any alien to whom a certificate of naturalization is granted shall, while in Hongkong, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural born British subject is entitled or subject in Hongkong.

7. The governor may revoke any certificate of naturalization which may have been granted to any alien if he shall be satisfied that such certificate was obtained by misrepresentation; and thereupon such certificate of naturalization shall become null and void.

A notification of the revocation of any certificate of naturalization shall be published in the Gazette.

8. There shall be paid for every certificate of naturalization and before the issue thereof such fee as the governor in council may from time to time direct.

9. This ordinance shall come into operation on such day as the governor, by notice in the Gazette, may fix.

Passed the legislative council of Hongkong, this 4th day of December, 1902.

C. CLEMENTI,
Acting Clerk of Councils.

Assented to by his excellency the governor, the 9th day of December, 1902.

F. H. MAY,
Colonial Secretary.

FORM OF CERTIFICATE OF NATURALIZATION.

Governor.

By his excellency ——— ———, governor of Hongkong.

Whereas, ——— ———, of ———, a subject of ———, has applied to me for a certificate of naturalization as a British subject; and

Whereas the said ——— ——— has satisfied me that he has, before making such applicaton, continuously resided in Hongkong (or been in the service of the Crown) for the space of ——— years,[a] and that he intends, if naturalized, to reside permanently in Hongkong.

[a The term must not be less than five years.]

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Now, therefore, I, the said ——— ———, as governor aforesaid, do hereby, under the powers vested in me in that regard by the naturalization ordinance, 1902, certify that the said ——— ———, of ———, is a naturalized British subject entitled in Hongkong to all political and other rights, powers, and privileges, and subject to all obligations to which a natural born British subject is entitled or subject in Hongkong.

Given under my hand this —— day of ———, 19—.

By command.

INDIA.

[Enclosure in despatch from Mr. Michael, consul-general, Calcutta, September 6, 1906.]

ACT NO. XXX OF 1852.[a]

[As modified up to 1st December, 1902. 16th July, 1852.]

AN ACT for the naturalization of aliens.

Whereas it is expedient to provide for the naturalization of aliens resident in the territories under the Government of the East India Company; it is enacted as follows:

1. Any person whilst actually residing in any part of the territories under the government of the East India Company may present a memorial to government,[b] praying that the privileges of naturalization may be conferred on him.

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[a] Short title, "The Indian naturalization act, 1852." *See* the Indian short titles act, 1897 (XIV of 1897). (General Acts, Vol. VI.) The act has been declared to be in force in the whole of British India, except as regards the scheduled districts, by the Laws local extent act, 1874 (XV of 1874), s. 3. (General Acts, Vol. II.)

This act is saved by s. 16 of the naturalization act, 1870 (33 & 34 Vict., c. 14) (printed Vol. I of the collection of statutes relating to India, p. 460).

It has been declared in force in Upper Burma generally (except the Shan states) by the Burma laws act, 1898 (XIII of 1898), s. 4 (1) and Sch. I (Burma Code, ed. 1899, p. 260), and in the Arakan Hill district by the Arakan Hill districts laws regulation, 1874 (IX of 1874), s. 3 (printed, ibid., p. 307).

The act has also been declared, by notification under s. 3 (a) of the scheduled districts acts, 1874 (XIV of 1874) (printed, General Acts, Vol. II) to be in force in the following scheduled districts, namely:

Sindh (see Gazette of India, 1880, Pt. I, p. 672).

Aden (see Gazette of India, 1879, Pt. I, p. 434).

West Jalpaiguri (see Gazette of India, 1881, Pt. I, p. 74).

The districts of Hazaribagh, Lohardaga (now the Ranchi district) (Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum and Pargana Dhalbum and the Kolhan in the district of Singhbhum (see Gazette of India, 1881, Pt. I, p. 504).

The scheduled portion of the Mirzapur district (see Gazette of India, 1879, Pt. I, p. 383).

Jaunsar Bawar (see Gazette of India, 1879, Pt. I, p. 382).

The districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (portions of the districts of Hazara, Bannu, and Dera Ismail Khan and the districts of Peshawar and Kohat now form the Northwest Frontier Province (Gazette of India, 1901, Pt. I, p. 857) see Gazette of India, 1886, Pt. I, p. 48).

The district of Lahaul (see Gazette of India, 1886, Pt. I, p. 301).

Coorg (see Gazette of India, 1881, Pt. I, p. 203).

The district of Sylhet (see Gazette of India, 1879, Pt. I, p. 631).

The rest of Assam (except the North Lushai Hills) (see Gazette of India, 1897, Pt. I, p. 299).

The scheduled districts in Ganjam and Vizagapatam (see Gazette of India, 1898, Pt. I, p. 870).

The scheduled districts of Kumaon, Garhwal, and Tarai Parganas (now known as the Kumaon Division) (see Gazette of India, 1902, Pt. I, p. 828).

[b] For definition of "Government," see sec. 12 infra.

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2. Such memorial shall state to the best of the knowledge and belief of the memorialist, his age, place of birth, place of residence, profession, trade or occupation, the length of time during which he has resided within the said territories, that he is settled in the said territories, or is residing within the same with intent to settle therein, and any other particulars which the government may require to be stated therein, and such memorial shall be in writing and signed by the memorialist, and accompanied by an affidavit sworn by him, verifying the truth of the statements contained therein.

3. The memorial shall be considered by the government to whom it shall be presented, who shall enquire into the circumstances of the case, and may require such evidence either by affidavit or otherwise as they may deem proper,[a] in addition to the before-mentioned affidavit of the memorialist, to prove the truth of the statements contained in such memorial.

4. The government may, if they shall think fit, issue a certificate in writing reciting such of the contents of the memorial as they may consider to be true and material, and granting to the memorialist all the rights, privileges, and capacities of naturalization under this act, except such rights, privileges, or capacities, if any, as may be specially excepted in such certificate.

5. The certificate shall be delivered to the memorialist, and a copy or duplicate thereof, together with the memorial upon which the same shall be obtained, and any affidavit which may accompany such memorial or be produced in support thereof, shall be filed by the secretary to the government, or such other officer as the government may direct; and such secretary or officer shall keep an alphabetical list of all persons who may be naturalized by such government.

6. If any material statement contained in such memorial shall be false, the government may, if they think fit, by an order in writing, declare the certificate issued upon such memorial to be null and void to all intents and purposes, except such purposes, if any, as may be specially excepted in such order, and from and after such order all the rights, privileges, and capacities derived through such certificate shall cease to exist.

7. Such fees shall be payable in respect of the proceedings hereby authorized as shall be fixed by the government.[b]

8. Upon obtaining such certificate, and taking and subscribing the oath as hereinafter prescribed, the memorialist shall within the said territories under the government of the East India Company be deemed a natural-born subject of Her Majesty as if he had been born

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[a] For example of a rule under this section, see Bombay List of Local Rules and Orders, Vol. I, ed. 1896, p. 19.

[b] For order fixing such fees in Madras (see Madras List of Local Rules and Orders, ed. 1894, p. 5).

For order fixing such fees in the United Provinces of Agra and Oudh (see Northwestern Provinces and Oudh List of Local Rules and Orders, ed. 1894, p. 11).

For order fixing such fees in Burma (see Burma Laws List, ed. 1897, p. 4).

For order fixing such fees in Assam (see Assam List of Local Rules and Orders, ed. 1893, p. 1).

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within the said territories,[a] and shall be entitled within the said territories to all the rights, privileges, and capacities of a subject of Her Majesty born within the said territories, except such rights, privileges, and capacities, if any, as may be specially excepted in such certificate.

9. [Saving of jurisdiction of Indian courts.] Rep. by the Repealing Act, 1874 (XVI of 1874).

10. Within sixty days from the day of the date of such certificate the memorialist named in such certificate shall take and subscribe the oath contained in the schedule annexed to this act.

11. Such oath, as well as any other oath or affidavit required by this act, may be administered by any magistrate or justice of the peace within the limits of his jurisdiction, or by any other person to be appointed for that purpose by government, and the person who shall administer the oath mentioned in the schedule to this act annexed shall grant to the memorialist a certificate in writing of his having taken and subscribed such oath, and of the date of his taking and subscribing the same, and shall forward to the government the oath so taken and subscribed, together with a duplicate of such certificate, which oath and duplicate certificate shall be filed and kept with the memorial.

12. The word "government" in this act shall be deemed to mean the person or persons for the time being lawfully entitled to administer the executive government in that part of the said territories in which the memorialist shall reside at the time of presenting such memorial. The word "magistrate" shall include any person lawfully exercising the powers of a magistrate, and words denoting the masculine gender shall include the feminine.

13. In every case in which the word "oath" or "affidavit" is used in this act, an affirmation to the same effect as the oath or affidavit required shall be sufficient in cases where the person required to make such oath or affidavit shall be a person allowed by law to affirm in civil cases, and in every such case such affirmation shall be made before the person authorized to administer the oath, and the word "oath" or "affidavit" wherever used in this act shall include such affirmation.

SCHEDULE.

Oath.

I, A. B., of (here state the description of the party), do swear (or being one of the persons allowed by law to affirm in civil cases, do affirm) that I will be faithful and bear true allegiance to the sovereign of the United Kingdom of Great Britain and Ireland, and of these territories * * *[b]

(Signed) A. B.

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[a] A person taking out a certificate under this act obtains only such advantages as are afforded by "colonial naturalization" (Hall, Foreign Jurisdiction of the British Crown, pp. 30, 31). By the operation of the saving contained in the naturalization act, 1870 (33 and 34 Vict., c. 14), section 16, he acquires the status of a natural-born subject of His Majesty only with reference to British India, though in practice the provisions of that section have not always been applied with absolute strictness in the case of colonial enactments (Hall, pp. 28, 29).

[b] The words "as dependent thereon, and that I will be true and faithful to the East India Company" were repealed by the repealing act, 1876 (XII of 1876).

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MALTA.

[Enclosure in despatch from Mr. Grout, consul at Valletta, August 31, 1906.]

CITIZENSHIP.

Malta is governed by the laws (the naturalization acts) and practice of Great Britain in regard to the acquisition and loss of nationality, etc.

As regards naturalization and denization, a special law is in force which is contained in proclamation No. IX, of the 24th October, 1817. It reads as follows:

I. The privileges of a Maltese subject of His Britanic Majesty may be communicated either wholly or in part in two different ways:

First. By naturalization; that is, by a legislative act of this Government, to be duly published and enrolled, and by which the privileges in question are granted irrevocably and without limitation.

Second. By denization; that is, by letters patent to be issued by the governor in his executive capacity, and with such limitations as to the extent of the privileges and the term of their duration as may be judged applicable to each individual case; and to be granted only during pleasure.

II. His Majesty's Government reserves to itself the power of granting or refusing either the one or the other of such acts at its own pleasure and discretion, as well as the power of granting the same to any individual not possessing the qualifications which are generally held to be necessary for obtaining those indulgences respectively, and which are as follows:

III. In order to authorize the demand of an act of naturalization, it will be required that the party applying for the same shall have been resident in these possessions for the full term of fifteen years and shall have given two years' notice to government of his intention to make such application; but in favor of the persons who shall have previously obtained letters of denization the notice will be dispensed with provided the period from the date of such act of denization exceeds that required for the notice.

IV. In order to demand letters of denization it will be required that the party applying shall have had his usual place of residence within these possessions for the term of ten years and shall have given at least six months' notice of his intention to make such application.

V. The most unimpeachable certificates of good character, and of propriety of conduct, will be required in both instances, and, in the case of persons holding letters of denization, the sentence of His Majesty's court in these islands on any such person, when the punishment exceeds six months imprisonment, will, ipso facto, subject him to the forfeitre of such letters of denization and all rights and priviledges thereto attached.

VI. The privileges granted by an act of naturalization will extend to all unmarried children, being legitimate, under the ages of 21 years, and actually residing with their father at the time of such naturalization, although such children may not have been born within these islands; provided that the names of such children be notified to government at the time of granting such act of naturali-

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zation. The privileges attached to letters of denization will be strictly confined to the person to whom they are issued.

VII. Previous to issuing either an act of naturalization or of denization the parties must take the oath of allegiance to His Britannic Majesty and must disclaim, in the most formal manner, all other protection on the one hand or allegiance on the other.

VIII. Any person holding such act of naturalization or denization who can be proved, after the date thereof, to have taken any oath of allegiance to any other sovereign, or to have claimed or enjoyed any priviledges attached to the subject of a foreign power, without the especial permission of government to that effect, will not only forfeit all such priviledges, but will be sent forthwith from these possessions.

IX. As it is intended to grant acts of naturalization to such persons only who are in a respectable line of life and possessed of a certain competency, arising from either property or trade, the fee upon such instrument will be two hundred and fifty scudi (about $100).

X. With regard to letters of denization, the fees will be regulated from one hunded and fifty scudi to twenty, according to the circumstances of the case, the privileges granted, and the situation in life of the applicant.

XI. Such persons who may already have received from this government letters of naturalization will produce the same within one month from the publication hereof at the chief secretary's office, when such letters will be canceled and the parties in lieu thereof will receive either acts of naturalization or letters of denization, according to their respective claims.

JOHN H. GROUT, *Consul.*

VALETTA, MALTA, *August 31, 1906.*

NATAL.

[Enclosures in despatch from Mr. Lay, consul-general, Cape Town, September 28, 1906.]

[No. 18, 1905.] HENRY MCCALLUM, *Governor.*

"ACT TO MAKE BETTER PROVISION WITH REGARD TO THE NATURALIZATION OF ALIENS."

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the legislative council and legislative assembly of Natal, as follows:

1. Law No. 23, 1874, entituled law "To repeal and reenact with amendments Law No. 8, 1874, 'For further facilitating the naturalization of persons of European birth or descent'" is hereby repealed.

2. (1) An alien of European birth or descent who has been in the service of the Crown or who within such limited time before making the application hereinafter mentioned as may be prescribed by the Governor, either by general order or on any special occasion, (*a*) Has resided in Natal for a term of not less than five years; or (*b*) Who having resided in Natal for a term of one year immediately before

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making the application hereinafter mentioned, has also resided in any part of His Majesty's dominions for such period as together with the period of one year aforesaid, will make up five years in all; and who intends, when naturalized, to reside or to serve under the Crown in Natal, may apply for a certificate of naturalization in the form prescribed in the first schedule of this act.

(2) The applicant shall produce in support of his application a certificate signed by some magistrate or justice of the peace to the effect that the applicant is known to the person so signing, and that to the best of such person's belief and knowledge the applicant is a person of good repute; and shall give such further evidence of the completion by him of the said term of service or of residence and of his intention to reside or to serve under the Crown in Natal as the governor may require; and shall furnish proof that notice of his intention to apply for a certificate of naturalization has been published in two issues of the Government Gazette.

(3) The governor, if satisfied with the evidence, shall take the applicant's case into consideration and may with or without assigning any reason grant or withhold the certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.

(4) No such certificate shall have any effect until the applicant has made and subscribed to the declaration of allegiance in the form prescribed in the second schedule hereto.

3. If the governor thinks fit to grant such certificate of naturalization, he shall direct the applicant to make and subscribe the declaration of allegiance in the form prescribed in the second schedule of this act before some magistrate or justice of the peace; and upon the certificate of such magistrate or justice of the peace that the applicant has made and subscribed before him the said declaration, he shall cause to be issued to the applicant a certificate of naturalization in the form prescribed by the governor.

4. Every person to whom a certificate of naturalization under this act is granted shall, except as otherwise provided by law, be entitled to all the rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in this colony.

5. Any person who shall have been granted a certificate of naturalization in the United Kingdom under section 7 of the naturalization act, 1870, of the Imperial Parliament, or who shall have been granted a certificate of readmission to British nationality under section 8 of the said act, and shall not subsequently have divested himself of his status as a British subject, shall, subject to any existing or future laws of this colony, be entitled in the colony to all the rights, powers, and privileges and be subject to all the obligations to which he would be entitled and subject if he had been granted a certificate of naturalization under the provisions of this act.

6. (1) Every married woman shall in this colony be deemed to be a subject of the State of which her husband is for the time being a subject.

(2) Where the father or the mother (being a widow) shall be or become naturalized under this act any child of such father or mother who while under age shall be or become resident with such father or

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mother in this colony shall be deemed and taken to be naturalized under this act.

7. A return of all persons to whom certificates of naturalization shall have been granted under this act during the preceding half-year shall be published in the Government Gazette in the months of January and July, and such return shall show in respect of each person: (1) Name in full. (2) Birthplace. (3) Nationality prior to grant of certificate. (4) Occupation. (5) Period of service under the Crown or of residence in Natal. (6) Date of issue of certificate.

8. If any person shall knowingly make any false statement in any application made under this act for the purpose of obtaining a certificate of naturalization, he shall, upon conviction, incur the same penalties as are by law provided against persons convicted of perjury; and in case a certificate of naturalization shall have been granted such certificate may be revoked by notice in the Government Gazette, and from the date of such notice shall be deemed to be void.

9. Every person obtaining a certificate of naturalization under this act shall pay for the same a fee of one pound, to be denoted by revenue stamps to be affixed to such certificate and cancelled by the officer issuing it.

10. The colonial secretary shall cause a register to be made and kept of all certificates of naturalization granted under this act, and shall, upon the application in writing of any person, and upon payment of a fee of five shillings, to be denoted by revenue stamps affixed to the application and cancelled by the officer receiving it, permit a search to be made for the name of any person upon or supposed to be upon the register.

11. A certificate under the hand of the colonial secretary attesting the fact of the issue of a certificate of naturalization to any person whose name appears upon said register shall be issued upon payment of a fee of five shillings, to be donated by revenue stamps affixed to the certificate and cancelled by the officer issuing it. Every such certificate shall be received as evidence of the facts therein stated.

12. Every certificate granted under this act shall be admissible in evidence without proof of the signature or seal attesting the same and shall be *prima facie* evidence of the person named therein being duly naturalized, and of the signature or seal attesting the same and of the official character of the persons appearing to have signed the same.

13. This act may be cited as the "Naturalization of Aliens Act, 1905."

SCHEDULE I.

Form of Application for Certificate of Naturalization.

To the Colonial Secretary of Natal:

I, A B, do hereby apply for a certificate of naturalization in the colony of Natal, and I declare that the following statements are true and correct in every particular:

1. Name of applicant in full ——— ———.
2. Married or single ———.
3. Names and ages of children (if any) ———.
4. Present nationality, and whether acquired by birth or naturalization ———.
5. If applicant has resided in British dominion other than Natal, state place or places and period or periods of such residence ———.

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6. Names and nationality of parents ———.
7. Birthplace (state fully name of place and country) ———.
8. Age next birthday ———.
9. Occupation ———.
10. Place of residence in Natal ———.
11. Period or periods during which, and place or places in which applicant has resided in Natal, giving dates and addresses ———.
12. Length of time during which applicant has been in service of Crown ———.
13. Does the applicant, if naturalized, intend to reside in Natal ———?

Declared at ———, this —— day of ———, 190—.

——— ———,
Signature of Applicant.

Before me, ——— ———,
Magistrate, or Justice of the Peace.

SCHEDULE II.

Declaration of Allegiance.

I, A B, of ———, do sincerely promise that I will be faithful and bear true allegiance to His Majesty, King Edward VII, his heirs and successors, according to law.

Declared at ———, this —— day of ———, 190—.

——— ———,
Signature of Applicant.

Before me, ——— ———,
Justice of the Peace.

Given at Government House, Natal, this 6th day of July, 1905.
By command of His Excellency the Governor,

CHARLES J. SMYTHE,
Colonial Secretary.

No. 7, 1858.]
(Signed) J. SCOTT.

LAW ENACTED BY THE LIEUTENANT-GOVERNOR OF NATAL, WITH THE ADVICE AND CONSENT OF THE LEGISLATIVE COUNCIL THEREOF, "FOR ENABLING ALIENS TO HOLD FIXED PROPERTY IN THIS COLONY."

Whereas by the law of this colony aliens are disabled from purchasing, acquiring, or owning fixed property therein; and whereas the circumstances of this colony are such as to render it expedient that such persons should be enabled to purchase, acquire, and own such property: Be it enacted by the lieutenant-governor of Natal, with the advice and consent of the legislative council thereof, as follows:

1. From and after the commencement and taking effect of this law it shall be lawful for aliens to purchase, acquire, and own fixed property in this colony, and to dispose of and give transfer of said property, in like manner as natural-born subjects of Her Majesty; but nothing in this law contained shall be deemed or taken to naturalize any alien, or to bestow upon any alien any of the privileges conferred by certificate of naturalization, save and except only the privilege of purchasing, acquiring, owning, disposing, and giving transfer of fixed property.

2. This law shall commence and take effect from and after the promulgation of Her Majesty's confirmation thereof.

Given at Government House this tenth day of April, 1858.
By command of his excellency the lieutenant-governor:

PHILIP ALLEN,
Acting Colonial Secretary.

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NEWFOUNDLAND.

[Enclosure in despatch from Mr. Cornelius, consul at St. John's, October 11, 1906.]

THE CONSOLIDATED STATUTES OF NEWFOUNDLAND (SECOND SERIES—1892).

TITLE XIX.—CHAPTER 145.—*Of the naturalization of aliens.*

Sec.
1. An alien may be naturalized after five years' residence.
2. After declaration magistrate may sign certificate.
3. Oath of allegiance.
4. Certificate of allegiance.
5. Copy of declaration and oath shall be sent to colonial secretary.
6. Fee for certificate.
7. An alien complying with provisions of the chapter shall be entitled to all rights, etc., of a British subject.
8. Penalty for false declaration.
9. Meaning of "disability."

1. Any alien, not being under any disability, who shall desire to become naturalized as a British subject, and who shall have resided in this colony for a period of five years next preceding the date of the declaration hereinafter mentioned, may make and sign before a stipendary magistrate a declaration in duplicate in the form of Schedule A to this chapter.

2. After such declaration in duplicate shall have been so made, signed, and deposited with such stipendary magistrate, he may sign and deliver to such alien a certificate of naturalization in the form of Schedule B to this chapter.

3. Every alien receiving such certificate of naturalization shall forthwith take the oath of allegiance and subscribe the same in duplicate as set forth in Schedule C to this chapter; and, until such oath shall have been taken and subscribed, the certificate of naturalization shall not be valid.

4. Such stipendary magistrate administering the oath of allegiance shall certify under his hand, on such certificate of naturalization, the fact of the same having been taken and subscribed in the form of Schedule D to this chapter, which certificate shall be evidence if its contents.

5. One copy of the said declaration and oath of allegiance so made, signed, taken, and subscribed, shall be transmitted by the stipendary magistrate to the colonial secretary, and the other to the chief clerk of the supreme court, to be filled in their respective offices.

6. Every alien shall pay to the stipendary magistrate a fee of two dollars and fifty cents upon receiving the said certificate of naturalization, two dollars of which he shall transmit to the receiver-general for the use of the colony and retain fifty cents to his own use.

7. An alien, having complied with the provisions of this chapter, and receiving such certificate of naturalization, shall be entitled to all the rights, privileges, and immunities, and subject to all the liabilities of British subjects in this colony: Provided, that nothing in this chapter contained shall qualify an alien to be the owner of a British ship.

8. Any person wilfully and corruptly making or subscribing any declaration under this chapter, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor and be liable

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to imprisonment, with or without hard labour, for any term not exceeding twelve months.

9. In this chapter, if not inconsistent with the context or subject-matter, the term "disability" shall mean the state of being an infant, lunatic, idiot, or married woman.

SCHEDULE A.

COLONY OF NEWFOUNDLAND.

To wit:

I, A. B., of ———, in the said colony of Newfoundland, ———, heretofore of ———, declare that I have resided in the said colony of Newfoundland for the period of five years next preceding the date of this declaration, and that I am desirous of becoming a naturalized British subject.

A. B.

Signed and declared by the said ——— ——— before me, at ——— aforesaid, this —— day of ———, 189—.

C. D.,
Stipendary Magistrate.

SCHEDULE B.

COLONY OF NEWFOUNDLAND.

I certify that ——— ———, heretofore of ———, having complied with the provisions of chapter 145 of the Consolidated Statutes (second series), shall, upon taking the oath of allegiance, become a naturalized British subject, and shall from thenceforth be entitled to all the rights, privileges, and immunities, and subject to all the liabilities of a natural-born British subject, as provided by the said chapter.

Dated at ———, in the said colony, this —— day of ———, 189—.

C. D.,
Stipendary Magistrate.

SCHEDULE C.

COLONY OF NEWFOUNDLAND.

I, ——— ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs, and successors.

So help me God.

A. B.

Sworn before me at ———, in the said colony, this —— day of ———, 189—.

C. D.,
Stipendary Magistrate.

SCHEDULE D.

COLONY OF NEWFOUNDLAND.

I, ——— ———, hereby certify that ——— ——— has this day taken and subscribed the oath of allegiance as a British subject in accordance with chapter 145 of the Consolidated Statutes (second series).

Dated at ———, in the said colony, this —— day of ———, 189—.

C. D.,
Stipendary Magistrate.

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NEW ZEALAND.

[Enclosures in despatch from Mr. Prickitt, consul-general, Auckland, New Zealand, October 4, 1906.]

[1880—No. 10.]

AN ACT To consolidate the laws of New Zealand relating to aliens. [17th August, 1880.]

Be it enacted by the general assembly of New Zealend in Parliament assembled, and by the authority of the same, as follows:

1. The short title of this act is "The aliens act, 1880."

PROCEDURE TO OBTAIN NATURALIZATION.

2. When any alien friend now residing in or who shall hereafter reside in New Zealand desires to be naturalized the governor may, if he think fit, grant to him letters of naturalization under the seal of the colony.

3. Every such grant of letters of naturalization may be made subject to such conditions as the governor considers necessary or advisable.

4. When any such alien friend desires to obtain naturalization he may present to the governor a memorial signed by the applicant and stating therein—

(1) His name, age, birthplace, residence, and occupation;

(2) The length of his residence in the colony, and his desire to settle therein;

(3) And a request that letters of naturalization may be granted to him.

Every such memorial shall be verified by a statutory declaration to be subscribed by the applicant.

Such memorial shall also have written thereon or attached thereto a certificate, signed by some resident magistrate or justice of the peace, to the effect that the applicant is known to the person so signing, and is, to the best of such person's belief and knowledge, a person of good repute.

5. If the governor think fit to grant such letters, he shall direct the applicant to take the oath of allegiance prescribed by "The promissory oaths act, 1873," before some resident magistrate or justice of the peace; and upon the certificate of such magistrate or justice that the applicant has taken before him the said oath, and upon payment of the fee for enrolment hereinafter prescribed he shall issue letters of naturalization to the applicant accordingly.

6. Upon such letters of naturalization being issued to him, the applicant shall enjoy all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit within this colony, except such rights and capacities (if any) as are specially excepted in the letters of naturalization granted and issued to him.

7. When any person resident in New Zealand has previously obtained any certificate or letters of naturalization in the United Kingdom of Great Britain and Ireland, or any part thereof, or in any British colony or possessions, and desires to be naturalized in New Zealand, the governor may, at his discretion, grant the letters

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of naturalization, without requiring from the applicant any further residence in New Zealand or (if the applicant has previously taken a similar oath) the oath prescribed under this act, and upon his complying with the following conditions:

(1) He shall submit such certificate or letters of naturalization to the governor, and also present such memorial as required by the preceding provisions of this act.

(2) He shall further state in such memorial that he is the person named in such certificate or letters of naturalization, and that the same has been obtained without any fraud or intentional false statement, and that the signature, and the seal, if any thereto, are, to the best of his belief and knowledge, genuine.

(3) Every such memorial shall be verified by a statutory declaration to be subscribed by the applicant.

8. The colonial secretary shall enrol for safe custody, as of record, a duplicate of all letters of naturalization.

He shall also enrol certified copies of every such certificate or letters of naturalization previously obtained as aforesaid, and upon which letters of naturalization are issued under this act.

Every person to whom letters of naturalization are granted under this act shall pay to the colonial secretary the fee of one pound in respect of such enrolment.

9. The colonial secretary shall cause proper indices to be made to letters of naturalization and certificates enrolled by him, and shall permit every person desirous of so doing to inspect the same and make copies of such letters and certificates on payment of the fee of one shilling for every such inspection.

Copies of letters of naturalization or certificates enrolled as before provided, if certified to be true copies by the colonial secretary, shall be admissible in evidence for all purposes.

Such fees shall be charged for certified copies as the colonial secretary may prescribe.

10. If any person to whom letters of naturalization have been granted be convicted of having wilfully made any false statement in his memorial, he shall be deemed guilty of perjury, and such letters of naturalization shall, except against a bona fide purchaser from such person for valuable consideration, become thereby void.

PROPERTY AND RIGHTS OF ALIENS.

11. Every alien friend resident in New Zealand may inherit or otherwise take by representation, acquire, hold, convey, assign, devise, bequeath, or otherwise dispose of every description of property, whether real or personal, in the same manner as if he were a natural-born subject of Her Majesty.

12. Every grant, conveyance, assignment, demise, devise, or bequest to or by any such alien made prior to the twelfth day of September, one thousand eight hundred and seventy, shall be as valid and effectual as if it had been made to or by a natural-born subject of Her Majesty.

13. Every person now born or hereafter to be born out of Her Majesty's dominions of a mother being a natural-born subject of the

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United Kingdom shall be capable of taking to him, his heirs, executors, or administrators, any estate within this colony, real or personal, by devise or purchase or inheritance of succession.

14. Any alien woman married, or who shall be married, to any natural-born subject of Her Majesty or naturalized person, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject.

FEES UNDER THE IMPERIAL ACT 33 AND 34 VICT., CAP. 14.

15. In respect of any act or thing specified in the first column of the first schedule hereto, when done, taken, made, granted, or given in New Zealand under the authority of the act of the Imperial Parliament called "The naturalization act, 1870," or any regulations made or to be made thereunder, there shall be payable the fees respectively set forth in the second column of the said schedule, and the same shall respectively be paid to the persons denominated and be applied as set forth in the third column of the said schedule.

16. The acts enumerated in the second schedule hereto are hereby repealed.

SCHEDULES.

First schedule.

FEES.

The act, matter, or thing in respect of which the fee may be taken.	The amount of fee.	To whom payment of fee to be made, and how applied.
	£ s. d.	
For taking a declaration, whether of alienage or British nationality.	0 1 0	To the clerk of the court or of the justice taking the declaration, if taken by a justice or before a court of judicature, and to be paid to the public account. If not before such court or by a justice, then to the officer taking the declaration.
For granting a certificate of readmission to British nationality, and for registering the same, together with the oath of allegiance.	1 0 0	Into the treasury, to be carried to the public account.
For administration of the oath of allegiance.	1 5 0	If the oath is administered by a justice of the peace, or before a court of judicature, to the clerk of such justice or court, and to be carried to the public account. Otherwise, to the officer administering the oath, and to be paid over to the public account.
For transmitting to the home office a declaration, with or without oath, for registration.	0 1 6	To the clerk of the justice or court, or to the officer who transmits the same, in each case for his own benefit.
For transmitting to the colonial secretary's office a declaration, with or without oath, for registration.	0 1 0	Same as preceding.
For certified copy of any declaration or certificate, with or without oath.	0 10 0	Into the treasury, to be carried to the public account.

Second Schedule.

ACTS REPEALED.

1866, No. 17. The aliens act, 1866.
1870, No. 40. The aliens act, 1870.
1871, No. 47. The naturalization act, 1870; fees act, 1871.

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1892, No. 19.

AN ACT Relating to the children of naturalized persons and the charge for letters of naturalization. [24th September, 1892.]

Be it enacted by the general assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. The short title of this act is "The aliens act amendment act, 1892."

2. Where the father, or the mother being a widow, has obtained letters of naturalization in New Zealand, every child of such father or mother who during infancy has become resident with such father or mother in any part of New Zealand shall be deemed and taken to be himself or herself naturalized, and have all the rights and privileges of a natural-born subject.

3. Section seven of "The aliens act, 1880," is hereby repealed, and, in lieu thereof, it is enacted as follows:

If any person resident in New Zealand, who has previously obtained any certificate or letters of naturalization in the United Kingdom of Great Britain and Ireland, or any part thereof, or in any British colony or possession, desires to be naturalized in New Zealand, he shall submit such certificate or letters of naturalization to the governor, together with a statutory declaration, to be subscribed by the applicant, to the effect that he is the person named in the said certificate or letters of naturalization, and that the same has been obtained without any fraud or intentional false statement, and that the signature and the seal (if any) thereto are, to the best of his belief and knowledge, genuine;

And thereupon the governor may, at his discretion, without requiring from the applicant any further residence in New Zealand, or (if the applicant has previously taken a similar oath) the oath prescribed under the aforesaid act, direct the colonial secretary to indorse upon such certificate or letters a memorandum, in the form or to the effect in the schedule hereto, and a note of such certificate or letters and memorandum, with the particulars of the applicant's name, age, and nationality, shall be enrolled in the same manner as in the case of the issue of letters of naturalization in the colony.

The person named in the said certificate or letters of naturalization shall, for all purposes, from the date of the aforesaid memorandum, be deemed to be naturalized within the colony as if letters of naturalization, under the seal of the colony, had been issued to the said person.

4. No fee shall be paid henceforth by any person in respect of the enrolment or indorsement of letters of naturalization by the colonial secretary, excepting in the case of persons of the Chinese race, who shall pay in respect of such enrolment or indorsement such fee, not exceeding one pound, as the governor in council from time to time may appoint.

5. All the words of section eight of "The aliens act, 1880," after the words "issued under this act" are hereby repealed, and also "The aliens act amendment act, 1882," is hereby repealed.

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SCHEDULE.

Memorandum to be endorsed on letters of naturalisation. Accepted, noted, and registered in New Zealand.

The within named is hereby naturalized for all purposes within the colony of New Zealand, from the date of this memorandum.

A. B.,
Colonial Secretary of New Zealand.

Dated at Wellington, New Zealand, this —— day of ———, 18—.

GREECE.

[Translation.]

GREEK CIVIL LAW—LAW 391 OF OCTOBER 29, 1856.

BOOK I. *Concerning persons.*

SECTION 1. ON THE ENJOYMENT, LOSS, AND RECOVERY OF CIVIL RIGHTS.

CHAPTER I.—*On the enjoyment of civil rights.*

ART. 9. The enjoyment of civil rights is independent of the enjoyment of political rights, which are acquired and preserved only in accordance with public law. (French code, 7.)

ART. 10. Every Greek enjoys all civil rights. (French code, 8.)

ART. 11. The fetus is regarded as being born, so far as the civil rights accruing to it are concerned, provided it is born alive; however, if there is a doubt as to whether it was born alive or dead the former hypothesis is assumed.

ART. 12. Artificial persons constituted according to the law enjoy civil rights in so far as their enjoyment thereof is not restricted by special laws.

ART. 13. Aliens also enjoy civil rights in Greece, except when the laws of the nation, unmodified by treaties, grant certain civil rights to natives only. (French code, 11.)

ART. 14. The following are Greeks: (*a*) One born of a Greek father; (*b*) one born of a Greek mother and an unlawful father; (*c*) one born in Greece of an unknown father and mother; (*d*) one born of an alien mother and an unlawful Greek father, if he be legally recognized by the latter. (French code, 8.—Jurisprudence.)

ART. 15. An alien who is of age according to the law of the nation to which he belongs may become a Greek by naturalization. Every person wishing to be naturalized must declare his desire to the authorities of the place where he wishes to establish his residence, and after the declaration he shall reside in Greece two years if he is of the Greek race, and three years if of a different race; upon the expiration of this period, and upon procuring a certificate from the proper public attorney that he has not committed any of the crimes or offenses embraced within article 22 of the penal code, he must take the oath of a Greek before the proper prefect.[a] (French code, 8.)

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[a] See also law 2320 of 1895, abolishing naturalization by royal decree in future. See also law 2483 of March 8, 1897, on the enlistment of volunteers in the army.

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ART. 16. The King may allow an alien who has applied for naturalization full enjoyment of civil rights during the period required for naturalization, but in such a case all his legal relations shall be regulated according to the Greek laws. (French code, 13.—Jurisprudence.)

ART. 17. Children born prior to the declaration regarding naturalization, and the wife of a person who has been naturalized, remain aliens; but if, at the time of naturalization, the wife or the children were minors they may acquire Greek nationality, provided that, within a year after the attainment of their majority, they declare their desire to that effect before the authorities of the place where they wish to establish their residence, reside in Greece, and take the oath of a Greek before the proper prefect.

ART. 18. The children born during the two-year or three-year period referred to in article 15 become Greeks by the naturalization of the father.

ART. 19. A person born of a Greek woman and an unlawful alien father, but recognized by the latter, and one born in Greece of an alien, may acquire Greek nationality according to the provisions of article 17.

ART. 20. A person born of parents who have renounced Greek nationality may always acquire this nationality by fulfilling the requirements of article 17.

ART. 21. An alien woman married to a Greek becomes a Greek.

ART. 22.[a] An alien who renders great services to Greece, who introduces there an important invention or industry, who founds establishments of public utility, or who is distinguished for superior intellectual ability, may be naturalized by a law.[b]

CHAPTER II.—*The renunciation and recovery of civil rights.*

ART. 23. The following persons renounce their Greek nationality: (*a*) He who is naturalized in a foreign country; (*b*) he who accepts public employment from a foreign government without royal permission. (French code, 17.—Jurisprudence.)

ART. 24. The wife and children of one renouncing Greek nationality remain Greek.

ART. 25. A Greek woman married to an alien renounces her Greek nationality, but if her husband becomes naturalized as a Greek or she becomes a widow or divorced, she may recover said nationality, if she resides in Greece or returns thither from a foreign country, upon declaring her desire to recover it before the authorities of the place in which she desires to reside. (French code, 19.—Jurisprudence.)

ART. 26. A person naturalized in a foreign country with royal permission recovers Greek nationality if, having returned to Greece, he

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[a] Article 22 is given as modified by law 438 of 1858.

[b] A number of such laws have been enacted, such as law 447 of 1858, on the naturalization of D. Bernadakes; law 448 of 1858, on the naturalization of A. Arsakes; law 449 of 1858, on the naturalization of S. Sinas; law 214 of 1867, on the naturalization of Hel. Makalski (Dora d'Istria); law 840 of 1882, on the naturalization of K. Zappa. See law 1129 of 1883, on the administration of oaths to persons who are naturalized by a law.

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declares his desire to recover such nationality before the proper authority and establishes his residence in Greece.

ART. 27. A person who renounces Greek nationality may always recover it if, having returned to Greece, he declares his desire to this effect before the proper authorities, resides in Greece six months, and takes the oath of a Greek before the prefect. (French code, 18.)

ART. 28. A person who has entered foreign military service without royal permission may recover his Greek nationality if, having returned to Greece, and having previously obtained royal permission, he fulfills the conditions imposed on an alien for becoming naturalized.

ART. 29. The deprivation of civil rights in consequence of a criminal sentence is regulated by the penal laws.[a]

GUATEMALA.

[Enclosures in despatch from Mr. Brown, chargé d'affaires, September 19, 1906.]

MEMORANDUM BY PHILIP BROWN

1. Laws relating to citizenship:

(*a*) Constitution (Enclosure I).

(*b*) "Ley de Extranjeria" (alien law) (Enclosure II).

2. Means by which citizenship is lost:

(*a*) By entering service of a foreign country without consent of Government. ("Ley de Extranjeria," article 7. Enclosure II.)

(*b*) Citizenship suspended temporarily by naturalization in a foreign country, but all obligations of original nationality continue in force on return of native Guatemalan to his country. ("Ley de Extranjeria," article 8. Enclosure II.)

(*c*) Marriage of a Guatemalan woman to a foreigner and domiciled out of Guatemala. ("Ley de Extranjeria," article 1. Enclosure II.)

3. Renunciation and reacquisition of citizenship:

(*a*) Though Guatemalan law does not explicitly authorize renunciation of citizenship, it does so by implication as indicated in foregoing instances.

(*b*) Citizenship may be reacquired by petition to minister of foreign affairs or Guatemalan diplomatic or consular agent in place where the petitioner resides, he renouncing protection of foreign flag and inscribing renunciation and declaration in "civil register." Government reserves right to resolve these cases as most convenient. ("Ley de Extranjería," articles 4 and 5. Inclosure II.)

4. Residence in foreign parts:

(*a*) Law makes no provision on this point except as concerning children born abroad of Guatemalan father, or illegitimate children of Guatemalan mother, who must announce their choice of citizenship "within year following majority or emancipation." ("Ley de Extranjería," article 6. Inclosure II.)

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[a] Code of Greek laws, comprising all the laws in force in Greece. Compiled by E. Liakopoulos, Civil law (2d ed., 1898), p. 243. Enclosure in despatch from Mr. Wilson, chargé d'affaires, August 26, 1906.

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(*b*) Though constitution declares all persons, excepting children of diplomatic agents, born in Guatemala to be native citizens, it is provided in article 10 of the treaty of 1887—still in force—between Germany and Guatemala, that children of Germans, born in Guatemala, are German, and children born of Guatemalans in Germany are Guatemalans, if they fulfill obligations of military service in country of father within one year after reaching majority. (Constitution, article 5, Section I, Inclosure I. Treaty of 1887. Article 10. Inclosure IV.)

5. Practice of Guatemala in protecting citizens abroad:

(*a*) Diplomatic and consular agents are strictly instructed by Guatemalan Government as to their duties in protecting Guatemalan citizens abroad. (Guatemalan diplomatic and consular regulations, paragraphs 8 and 16–26, inclusive. Inclosure III.)

6. Law relating to naturalization and acquisition of citizenship:

(*a*) All foreigners may acquire citizenship in Guatemala after two years' residence and complying with legal requirements. ("Ley de Extranjería," articles 86 and 88. Inclosure II.)

(*b*) Spanish Americans who do not reserve nationality in form established by law are held to be naturalized Guatemalans. (Constitution, article 7. Inclosure I. "Ley de Extranjería," articles 3 and 87. Inclosure II.)

(*c*) Natives of other Central American Republics, who manifest before competent authority their desire to become Guatemalans, are considered as native Guatemalans. (Constitution, article 6. Inclosure I. "Ley de Extranjería," articles 3 and 87. Inclosure II.)

[Inclosure I.—Translation.]

CONSTITUTION.

ARTICLE 4. Guatemalans are divided into natives and naturalized.

ARTICLE 5. The following are natives:

1. All persons born or that may be born in the territory of the Republic, whatever the nationality of the father may be, the children of diplomatic agents excepted.

2. The children of a Guatemalan father or the illegitimate children of a Guatemalan mother, who are born in a foreign country, form the moment that they fix their residence in the Republic; and even without this condition, when, according to the laws of the place where they were born, Guatemalan nationality belongs to them, or if they have the right to choose and select Guatemalan nationality.

ARTICLE 6. Natives of other Central American republics who manifest before a competent authority their desire of becoming Guatemalans, are also considered as native Guatemalans.

ARTICLE 7. The following are naturalized:

1. Spanish-Americans residing in the Republic, if they do not preserve their own nationality.

2. Other foreigners who have been naturalized according to previous laws.

3. Those who obtain naturalization papers in conformity with the law.

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[Inclosure II.—Translation.]

LAW OF FOREIGNERS OF 1894.

TITLE I.—*Single Chapter.—Who are Foreigners.*

ARTICLE 1. For the purposes of this law the following are considered foreigners: Persons born outside of Guatemalan territory of parents who are not Guatemalans. Legitimate children born outside of Guatemala of a foreign father and Guatemalan mother. Guatemalans who have lost their nationality. Those born outside of Guatemala of parents who have lost their Guatemalan nationality. A Guatemalan woman married to a foreigner and domiciled outside of Guatemala. Children of diplomatic ministers though born in Guatemalan territory.

ARTICLE 2. National vessels shall be considered as Guatemalan territory in determining the nationality of those born on board thereof.

ARTICLE 3. The following shall be considered as naturalized Guatemalans:

1. Spanish-Americans domiciled in the Republic who have not reserved their nationality in the manner prescribed by article 87 of this law, and in accordance with the first clause of article 7 of the constitution of the Republic.

2. All other foreigners who obtain naturalization papers in accordance with the provisions of this law and of the third clause of article 7 of the constitution. Central Americans who manifest their desire before the authorities in the manner prescribed by article 87 of this law, and in accordance with article 6 of the aforesaid constitution, shall be considered as native Guatemalans.

ARTICLE 4. A Guatemalan who has lost his nationality by becoming naturalized in a foreign country, as well as the divorced wife of a foreigner, and both residing outside of Guatemala, may recover their original nationality at any time by making application, renouncing the protection of the foreign flag, and having their declaration and renunciation recorded in the civil register. The Government, however, reserves the right to decide such cases in the manner which it deems most expedient.

ARTICLE 5. The application referred to in the foregoing article must be made before the minister of foreign affairs of the Republic, or before the Guatemalan diplomatic or consular officer of the place where the applicant resides.

ARTICLE 6. The children of a Guatemalan father or the illegitimate children of a Guatemalan mother who are born and reside in a foreign country and who, according to the laws of their birth, are entitled to choose their nationality must, if they decide in favor of Guatemalan nationality, declare their intention within a year following the attainment of their majority or their emancipation before the Guatemalan diplomatic or consular officer, who must in this as in the preceding case record the fact in the register of the legation or consulate in his charge and give immediate notice thereof to the minister for froeign affairs of the Republic.

ARTICLE 7. A Guatemalan who has entered the service of a foreign country, enlisted in the army, or accepted a municipal office or similar

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authority without permission from the Government of Guatemala, shall be considered as a foreigner; however, he may recover Guatemalan nationality by fulfilling the formalities established in articles 4 and 5.

ARTICLE 8. A Guatemalan naturalized in another country shall, on returning to Guatemala, continue subject to the obligations of his original nationality, suspended only during his absence, and the allegation that he has been naturalized in another country can not exempt him from fulfilling them.

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TITLE VII.—*Single chapter. Naturalization of foreigners.*

ARTICLE 86. The procedure to be followed in order to acquire naturalization in accordance with clause 3, article 7, of the constitution of the Republic shall be as follows: The applicant must prove to the chief civil magistrate of the department that he has resided two years in the Republic and that he has observed good conduct and has an income, profession, art, trade, or some other honorable way of making a living. The proof of these points may be by documents or by witnesses. When the proof has been furnished the civil magistrate shall transmit it to the department of foreign affairs, and when the application has been examined the President of the Republic shall issue a decree granting the naturalization, provided the conditions imposed have been fulfilled. When the decree has been issued, a copy thereof shall be sent to the civil register so that it may be recorded according to law.

ARTICLE 87. In order to make the reservation of nationality mentioned in article 7 of the constitution of the Republic, as well as the declaration referred to in article 6 of the same law, the parties concerned shall apply in writing to the chief civil magistrates of the departments, who, after having them ratify their application, shall transmit it to the department of foreign affairs, which shall issue the proper certificate upon payment of a fee of one dollar plus the amount of the stamped paper used. This certificate must be recorded in the civil register in order to be effective.

ARTICLE 88. Any foreigner may be naturalized in Guatemala, without distinction of origin, in conformity with the provisions of article 86.

ARTICLE 89. Naturalization may be express, tacit, or presumed.

ARTICLE 90. Naturalization papers are divided into two classes, viz, those in the nature of a grant and those in the nature of a declaration. The former contain a grant of express naturalization, while the latter contain a declaration that the interested parties have been naturalized by virtue of the law because of having performed certain acts, or, what is the same, having made a declaration of tacit naturalization.

ARTICLE 91. Papers declaring tacit naturalization are retroactive in their effects to the date in which the legal act was performed which brought about the change of nationality in contradistinction to papers granting naturalization, which become effective from and after the day of their issue.

ARTICLE 92. Naturalization papers can not be granted to the following: To the subject of a nation engaged in a war with Guatemala or to those who are reputed or declared judicially in any country as

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pirates, slave traders, incendiaries, poisoners, parricides, or counterfeiters of money or bank notes or other paper used as money.

ARTICLE 93. Tacit naturalization is effected.

1. By omitting to make the reservation mentioned in clause 1 of the constitution of the Republic.

2. By accepting any of the offices or public employments reserved for Gautemalans.

ARTICLE 94. A naturalized person acquires all the rights and contracts all the obligations of Gautemalans, with the exceptions made in the ensuing articles.

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[Inclosure III.—Translation.]

DIPLOMATIC AND CONSULAR REGULATIONS OF THE REPUBLIC.[a]

The Diplomatic Service.

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ARTICLE 5. Besides the obligations incumbent upon the heads of diplomatic missions in the discharge of their office in conformity with international law and the instructions which may be given them by the department of foreign affairs, they shall have the following duties:

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11. To protect Guatemalan citizens and look after the safety of their persons and property, seeing that the benefit of the laws and the rights belonging to them are never denied them under any pretext.

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CHAPTER I.—*The Consular Service.*

ARTICLE 1. In establishing consulates in foreign countries the executive shall take into account:

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16. Consuls shall afford to Guatemalans residing in their district, as well as to their interests and property, the same protection which the Republic should afford to said persons and property abroad.

17. By virtue hereof they are entitled to exercise over them the authority which the nation reserves to itself in that regard in spite of the fact that such persons and interests are located outside of its territory.

18. With regard to the protection which they are to afford, as well as the authority which they are to exercise, they shall comply strictly with the provisions of the regulations and of the laws on the subject.

19. By virtue of their duties to afford protection they shall see that Guatemalans enjoy with regard to their persons and their property all the rights which are granted to them by treaties, or, failing the latter, according to the general principles of international law, and by the laws or practice prevailing with respect to foreigners in the country in which they are located.

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[a] Edition of 1900.

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20. If the rights of their compatriots should be violated by unjust or arbitrary acts on the part of the local authorities, they should support the parties concerned in the representations which they make before the proper authorities, while also complying with the provisions of article 21 of the regulations, it being their duty, on submitting the case to the legation of Guatemala or the ministry of foreign affairs, to send a copy of all the correspondence which has been exchanged regarding the matter, and a detailed account of all proceedings taken.

21. Intervention by consuls in such cases should be preceded by a careful and minute investigation of the case in question, so that their intervention may in no case be lent in favor of unjust or unfounded claims.

22. In case of civil or international war, and, in the latter case, whether or not the nation in which they are serving takes part therein, they shall observe the strictest neutrality, and shall also see that it is rigorously observed by the Guatemalans of their district.

23. Consuls shall lend their aid to Guatemalans not only in representations which the latter may make before the authorities of the place, but also in all cases in which it may become necessary on account of their knowledge of the country, of its language, or of the local laws and practices, in order to facilitate to them the utilization of the rights which belong to them.

24. With respect to the property of absent Guatemalans who have no legal representative in the place, the consuls shall represent them in all proceedings taken for the purpose of preserving such property and preventing any injury thereto. It is incumbent upon them, therefore to assert the rights of the absentee before the proper authorities, and to furnish to the latter all the data and information necessary in order to facilitate their action, taking especial care to comply in all respects with treaties and with the laws of the place where they reside.

25. They should lend their assistance to Guatemalans who are destitute or sick, or who, through no fault of their own, may lack means of subsistence, securing for them honorable occupation, procuring admittance to charitable institutions for those in need thereof, and invoking in their behalf the charity of the Guatemalans within their jurisdiction. In order to lend them assistance at national expense, it is first necessary to obtain an express order from the Government.

[Enclosure IV.—Translation.]

TREATY WITH GERMANY OF SEPTEMBER 20, 1887.

ARTICLE X.

1. The two high contracting parties, being desirous to evade all difficulties that might arise on the question of nationality, agree that those shall be considered as Guatemalans in Germany and as Germans in Guatemala who, having transferred their residence from the one to the other country, have preserved the nationality of their native land in conformity with the laws thereof.

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2. They agree, likewise, that the legitimate children of a Guatemalan father born in Germany shall be considered Guatemalan, and the legitimate children of a German born in Guatemala as Germans.

3. Nevertheless, these children on becoming of age, according to the laws of their country, shall prove that they have complied or are complying strictly with the laws relating to military service in their country, and these proofs shall be made by legalized documents through the diplomatic agents of their country, before the authority appointed by the Government for such purpose.

Should they not fulfill this requirement within 12 months from the date they become of age, they may be considered as citizens of the country of their birth.

4. The descendants of those who have preserved the nationality of their father according to paragraph 3 may be considered as citizens of the country of their birth.[a]

HAITI.

[Enclosures in despatch from Mr. Furniss, minister to Haiti, August 6, 1906.]

CONSTITUTION.

[Translation.]

TITLE II.

CHAPTER I.—*Haitians and their rights.*

ARTICLE 3. The following are Haitians:

1. Every person born in Haiti or elsewhere of a Haitian father.

2. Every person born in Haiti or elsewhere of a Haitian mother, without being acknowledged by his father.

3. Every person born in Haiti of a foreign father, or of a foreign mother if he is not acknowledged by his father, provided that he is a descendant of the African race.

4. All those who have hitherto been recognized as Haitians.

ARTICLE 4. Any foreigner may become a Haitian in conformity with the rules established by law.

ARTICLE 5. A foreign woman married to a Haitian follows the status of her husband.

A Haitian woman married to a foreigner loses her Haitian nationality.

In case of a dissolution of the mariage, she may recover her Haitian nationality by fulfilling the formalities prescribed by law.

A Haitian woman who has lost her nationality through her marriage to a foreigner can neither possess nor acquire real estate in Haiti under any title whatsoever.

A law shall regulate the manner in which the real estate which she owned before her marriage shall be expropriated.

ARTICLE 6. No person not a Haitian can be an owner of real estate in Haiti under any title whatsoever, nor acquire any real estate there.

ARTICLE 7. Every Haitian who becomes naturalized in due form in

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[a] Text as printed in 79 Brit. and For. State Papers, 741.

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a foreign country shall not return to this country within five years, and if he wishes to become a Haitian he shall be obliged to fulfill all the conditions and formalities imposed on foreigners by the law.

TITLE II.

CHAPTER II.—*Civil and political rights.*

ARTICLE 8. The possession of all civil and political rights constitute citizenship.

The exercise of civil rights is regulated by law independently of political rights.

ARTICLE 9. Every citizen who has attained the age of 21 years shall exercise political rights if he fulfills all the other conditions established by the constitution.

Naturalized Haitians are only permitted to exercise these rights after five years' residence in the Republic.

ARTICLE 10. Haitian citizenship is lost as follows:

1. By naturalization in a foreign country.
2. By abandonment of the country at a time of imminent danger.
3. By unauthorized acceptance of public office or pensions conferred by a foreign government.
4. By any service rendered to the enemies of the Republic or by making compromises with them.
5. By final sentence, after trial, to penalties lasting for life, and which are at once corporal and infamous.

ARTICLE 11. The exercise of political rights is suspended:

1. As the result of becoming a bankrupt, simple or fraudulent.
2. As a result of a judicial interdiction, indictment, or declaration *in contumaciam*.
3. As a result of a judicial sentence involving a suspension of civil rights.
4. As a result of a judgment corroborating a refusal to perform national guard service or to serve on the jury.

The suspension ceases with the cause which has given rise thereto.

ARTICLE 12. The law determines the cases in which citizenship may be recovered, as well as the method of recovery and the conditions to be fulfilled for that purpose.

MR. H. PAULÉUS SANNON, SECRETARY OF FOREIGN AFFAIRS, TO MR. FURNISS, AMERICAN MINISTER, JULY 31, 1906.

[Translation.]

PORT AU PRINCE, *July 31, 1906.*

MR. MINISTER:

* * * * * * *

A Haitian may reside abroad as long as he wishes without thereby losing his original nationality. Consequently, the Haitian law is the one which shall regulate his legal status and capacity during the period of his sojourn in a foreign country.

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The provisions regarding naturalization are contained in article 14 of the civil code, modified by the law of September 5, 1860, as follows:

All those who are qualified to acquire Haitian citizenship by virtue of the constitution, should, within a month after their arrival in the country, make a declaration before the justice of the peace of their place of residence and in the presence of two respectable citizens that they come with the intention of settling in the Republic. They shall at the same time take an oath before the justice of the peace that they renounce allegiance to all other countries except Haiti. Furnished with a copy of the record of their declaration that they come to establish themselves in the Republic, and of their oath, they shall present themselves at the office of the President of Haiti to receive from the Head of the Nation a certificate recognizing them as citizens of the Republic.

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H. PAULÉUS SANNON.

HONDURAS.

CONSTITUTION (1904).*

[Translation.]

TITLE II.—*Hondurancans.*

ART. 6. Honduraneans are either native or naturalized.

ART. 7. The following are native Honduraneans:

1. All persons born or who may be born in the territory of the Republic. The nationality of the children of foreigners, born in Honduranean territory, and that of the children of Honduraneans, born in foreign territory, shall be determined by treaties. If there are no treaties, children born in Honduras of foreign parents domiciled in the country shall be Honduraneans.

2. The natives of other Central American Republics shall be considered as native Honduraneans by virtue of their residing in any part of the territory of Honduras, unless they declare their intention of retaining their nationality before the proper authority.

ART. 8. The following are naturalized Honduraneans:

1. The Spanish-Americans who have resided in the country one year and declare their desire to become naturalized therein before the proper authority.

2. Other foreigners who have resided in the country two years and declare their desire to become naturalized therein before the proper authority.

3. Those who obtain naturalization papers granted by the authority designated by the law.

TITLE IV.—*Citizens.*

ART. 22. The following persons lose their citizenship:

1. Those who accept employment from foreign nations without the permission of the proper authority. The Central American Republic are not considered as foreign nations.

2. Those who become naturalized in a foreign country. No Honduranean, even though he may acquire foreign nationality, shall become exempt from the duties imposed upon him by the constitution and the laws, as long as he maintains his residence in the Republic.

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* Text as printed in "Codificacion de 1906."

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ALIEN LAW.[a]

[Translation.]

CHAPTER I.—*Foreigners.*

ART. 1. The following are foreigners:

1. Those who were neither born in the Republic nor have become naturalized therein.

2. The natives of other Central American Republics who reside in any part of the territory of Honduras and who do not declare their intention to retain their nationality before the proper civil governor.

3. Spanish Americans who have resided one year in Honduras and have not declared their desire to become naturalized in the country before the authority indicated.

4. Honduraneans who become naturalized in another country and remove their residence thereto.

5. Those who serve foreign governments officially without the proper authorization.

ART. 2. The nationality of the children of foreigners, born in Honduranean territory, and the children of Honduraneans, born in foreign territory, shall be determined by treaties.

When there are no treaties, children born in Honduras of foreign parents domiciled in the country are Honduraneans.

ART. 3. For the purpose of determining the place of birth in the cases mentioned in the foregoing article, it is declared that national vessels are a part of the territory of Honduras.

ART. 4. The children of ministers and employees of the legations of the Republic shall not be considered as being born outside of the Republic for the purposes of this law.

ART. 5. Honduranean women who contract marriage with foreigners shall preserve their nationality if they continue to reside in the country.

ART. 6. A change in the nationality of the husband shall not involve a change in the nationality of the wife or of the minor children subject to the paternal authority, provided they reside in Honduras.

ART. 7. The nationality of artificial persons (corporations) is regulated by the law under which they are organized. Therefore all those which are organized in accordance with the laws of the Republic shall be Honduraneans, provided always that they have their legal domicile there.

ART. 8. Foreign corporations enjoy in Honduras the rights granted them by the laws of the country of their domicile, provided they are not contrary to the laws of Honduras and have been recognized by the executive branch of the Government.

CHAPTER II.—*Expatriation.*

ART. 9. Just as Honduraneans may expatriate themselves by becoming naturalized in another country, by virtue of their individual freedom of action, so may foreigners acquire Honduranean citizenship in conformity with the laws of the Republic.

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[a] Codificacion de 1906.

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ART. 10. Expatriation and consequent naturalization obtained in a foreign country do not exempt a criminal from the extradition, trial, and punishment to which he is subject according to treaties, international practice, and the laws of the nation.

ART. 11. No Honduranean shall become exempt from the duties imposed on him by the constitution and the laws, even though he may have acquired foreign nationality, as long as he has his domicile in the Republic.

ART. 12. Persons naturalized in Honduras shall, even though they happen to be in a foreign country, be entitled to the same protection as Honduraneans by birth, both in regard to their persons and their property.

ART. 13. The Government of the Republic shall, in order to protect Honduraneans residing abroad, employ the procedures and the means established in treaties, and failing the latter, the principles of international law shall be observed.

CHAPTER III.—*Naturalization.*

ART. 14. Any foreigner may acquire Honduranean citizenship by obtaining naturalization papers from Congress, or from the Executive when Congress is not in session.

ART. 15. A foreigner who desires to become naturalized shall make an application in writing, either himself or through a duly authorized representative, stating that he renounces all subjection, obedience, and fidelity to any other government, and especially to that of the country of which he has been a citizen, as well as all protection beyond that of the laws and authorities of Honduras, and every right which treaties or international law grant to foreigners, besides making a solemn promise to follow and obey the laws and the authorities.

ART. 16. The following are considered to be naturalized in Honduras:

1. Spanish-Americans who have resided one year in the country and declare their desire to become naturalized therein before the civil governor of the department in which they reside.

2. Other foreigners who have resided two years in the Republic and declare their intention to become naturalized therein before the authority mentioned in the foregoing number, and who have fulfilled the requirements of article 2 of this chapter.

ART. 17. Naturalization papers shall not be granted to the subjects or citizens of a nation with which the Republic is at war.

ART. 18. Neither shall they be granted to persons reputed and judicially declared in other countries to be pirates, slave traders, incendiaries, or counterfeiters of coin, bank notes, or other paper used as money, nor to assassins, kidnapers and robbers.

Naturalization obtained fraudulently by a foreigner in violation of the law shall be ipso jure null and void.

ART. 19. Naturalization papers or certificates shall be issued gratuitously, it being unpermissible to collect any fee for them under any pretext.

ART. 20. The naturalization of a foreigner in Honduras becomes effective from the day following that on which the conditions imposed by the law for acquiring it have been fulfilled.

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Rights which have become perfect or which were acquired in the original country shall be governed by the laws of the latter, but rights which are in expectancy shall be governed by the laws of Honduras.

* * * * * * *

ITALY.

[Enclosures in despatch from Mr. Hitt, chargé d'affaires, November 6, 1906.]

THE FOREIGN OFFICE TO THE EMBASSY, OCTOBER 6, 1906.

[Translation.]

No. 54412–82.] MINISTRY FOR FOREIGN AFFAIRS,
Rome, October 6, 1906.

In reply to the note verbale of August 13 last, the ministry of foreign affairs can not better answer the various questions asked by the embassy of the United States than by stating that everything regarding the acquisition, loss, and recovery of citizenship is expressly regulated by articles 4 to 15 of the Italian civil code, a copy of which is herewith inclosed.

Moreover, articles 35 and 36 of the recent emigration law of January 31, 1901 (No. 23), has modified some of the provisions of the above-mentioned code which concern citizenship, while everything relating to the conferring of citizenship has been modified by the law of May 17, 1906. A copy of this law and of the articles referred to is also inclosed herewith.

Concerning the inquiry as to the means employed by the Italian Government for the protection of its citizens residing permanently abroad, the ministry of foreign affairs begs leave to state that the protection of such persons and their interests is intrusted to the royal diplomatic and consular representatives, whose duties and privileges are regulated by the international conventions concluded with the country in which they reside, by the consular law of January 28, 1886 (No. 2804), and by the regulations on the subject of June 7, 1886 (No. 2996).

CIVIL CODE.

[Translation.]

ART. 4. A child whose father is a citizen is a citizen.

ART. 5. If the father has lost his citizenship before the birth of the child, the latter is considered a citizen if he was born in the Kingdom and has his residence there.

He may, however, within a year after attaining his majority according to the laws of the Kingdom, elect foreign nationality by making a declaration to this effect before the registrar of civil status of his place of residence, or, if he is in a foreign country, before the Italian diplomatic or consular officer.

ART. 6. A child born in a foreign country of a father who had lost his citizenship before the child's birth is considered a foreigner.

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He may, however, elect citizenship provided he makes a declaration to this effect in accordance with the foregoing article and establishes his domicile * * * in the Kingdom within a year after making the declaration.

However, if he has accepted a public office in the Kingdom, or has served or is serving in the army or navy, or has otherwise satisfied the requirements of the military service without claiming exemption as a foreigner, he shall be considered a citizen without any further requisite.

ART. 7. A child born of a mother who is a citizen, and whose father is unknown, is a citizen.

If the mother has lost her citizenship before the birth of the child, the provisions of the two foregoing articles shall not apply to the latter.

A child born in the Kingdom whose mother is also unknown is a citizen.

ART. 8. A child born in the Kingdom of a foreigner who has had his domicile there for ten years uninterruptedly is considered a citizen, but residence for purposes of commerce is not sufficient to establish domicile.

He may, however, elect foreign nationality by making a declaration to that effect at the time and in the manner established in article 5.

If the foreigner has not had his domicile in the Kingdom for ten years the child is considered a foreigner, but the last two paragraphs of article 6 shall be applicable to him.

ART. 9. A foreign woman who marries a citizen acquires citizenship and retains it even if she becomes a widow.

ART. 10. Citizenship may be acquired by a foreigner also through naturalization granted by law or by royal decree.

The royal decree shall not take effect unless recorded by the registrar of civil status of the place where the foreigner intends to establish or has established his domicile, and unless he takes an oath before the said officer that he will be loyal to the King and observe the constitution and the laws of the Kingdom.

The decree must be recorded within six months after its issue, otherwise it becomes void.

The wife and minor children of a foreigner who has acquired citizenship become citizens provided they have also established their residence in the Kingdom; however, the children may elect foreign nationality by making a declaration to that effect according to article 5.

ART. 11. Citizenship is lost by the following persons:

1. He who renounces it by so declaring before the registrar of civil status of his own domicile, and who transfers his residence to a foreign country.

2. He who has acquired citizenship in a foreign country.

3. He who accepts employment from a foreign government without permission of his own, or who enters the military service of a foreign power.

The wife and minor children of one who has lost his citizenship becomes foreigners, unless they have continued to maintain their residence in the Kingdom.

Nevertheless, they may recover their citizenship in the cases and in the manners set forth in the second paragraph of article 14, as

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regards the wife, and in the last two paragraphs of article 6, as regards the children.

ART. 12. The loss of citizenship in the cases mentioned in the foregoing article does not work exemption from the obligations of the military service, nor from the penalties imposed on those who bear arms against their country.

ART. 13. A citizen who has lost his citizenship through any of the causes set forth in article 11 may recover it provided he—

1. Returns to the Kingdom by special permission of the Government;

2. Renounces his foreign citizenship or the employment or appointment in the military service which he has accepted in a foreign country; or

3. Declares before the registrar of civil status that he intends to establish, and actually establishes, his domicile in the Kingdom within a year.

ART. 14. A woman who, being a citizen, marries a foreigner, becomes a foreigner provided she acquires the citizenship of her husband by virtue of the marriage.

If she becomes a widow she may recover her citizenship by residing in the Kingdom or returning thereto, and declaring in both cases before the registrar of civil status that she intends to establish her domicile therein.

ART. 15. The acquisition and recovery of citizenship in the cases hereinabove set forth shall have effect only from the day following that on which the conditions and formalities prescribed were fulfilled.

ARTICLES 35 AND 36 OF THE LAW OF JANUARY 31, 1901, ON EMIGRATION.

[Translation.]

ARTICLE 35.

Subdivision 3 of the first paragraph of article 11 of the civil code is abrogated.

ARTICLE 36.

Italian citizenship, including the acquisition and exercise of the political rights enjoyed by citizens, may be granted by decree of the ministry of the interior in concurrence with the ministry of foreign affairs to a person who, having been born in the Kingdom or abroad, has become a foreigner by reason of being a minor child of a father who has lost his citizenship or who, having been born in the Kingdom or abroad of a father who has lost his citizenship prior to his (the child's) birth, has not, according to articles 5, 6, and 11 of the civil code, declared within a year after becoming of age that he wishes to become a citizen, or else has expressly elected foreign citizenship; provided such person declares his intention of establishing his domicile in the Kingdom.

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LAW OF MAY 17, 1906.

[Translation.]

Victor Emanuel III, by the grace of God and by the will of the nation, King of Italy.

The Senate and the Chamber of Deputies have approved and we have sanctioned and promulgated the following:

ARTICLE 1.

Italian citizenship, including the acquisition and exercise of the political rights enjoyed by citizens, may be granted by royal decree with the consent of the council of state to a foreigner who (1) has resided six years in the Kingdom or the Italian colonies; (2) has served the Italian Government for four years, even though abroad; or (3) has had his residence in the Kingdom or the colonies during three years, if he has married a woman who was an Italian citizen or has rendered important service to Italy.

Nevertheless, a person who has acquired citizenship in the cases contemplated in the present article shall not be eligible to membership in either of the legislative chambers until six years have elapsed since the date of the decree granting it.

The conditions prescribed in the second and third paragraphs of article 10 of the civil code are also applicable to citizenship granted in accordance with the present article.

ARTICLE 2.

No change is made in the previous laws concerning the granting of citizenship by royal decree, including the full enjoyment of political rights, to Italians who do not belong to the Kingdom.

Persons other than Italians who shall have acquired citizenship subsequently to the publication of the present law by virtue of a royal decree and independently of the conditions imposed by the foregoing article, may also be granted the full enjoyment of political rights by another royal decree issued with the consent of the council of state, when the conditions imposed in subdivisions 1, 2, and 3, of paragraph 1 of the same article, have been fulfilled.

In such cases the grantee shall not be eligible to membership of the two legislative chambers until six years have elapsed since the date of the second royal decree.

ARTICLE 3.

Persons other than Italians who have acquired citizenship by royal decree before the publication of the present law may also, upon application, be granted the full enjoyment of political rights, by another royal decree issued with the consent of the council of state, when the conditions imposed in subdivisions 1, 2, and 3, of the first paragraph of article 1, have been complied with.

In such case they shall not be eligible to membership in either of the two legislative chambers until three years have elapsed since the date of the last royal decree, unless they have served the Italian Government for at least ten years.

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We order that the present document, bearing the seal of State, be embodied in the official collection of the laws and decrees of the Kingdom of Italy, and that the competent authorities be instructed to observe it and cause it to be observed.

Given at Rome, May 17, 1906.

VICTOR EMANUEL.

Countersigned:

SONNINO.

A true copy.

SARSON,
Director and Chief of Division.

JAPAN.

Mr. Wright, ambassador to Japan, to Mr. Root, Secretary of State, August 22, 1906.

No. 49.] AUGUST 22, 1906.

SIR: In compliance with the Department's circular of July 9, 1906, I have the honor to transmit herewith translations of the laws of Japan concerning citizenship, expatriation, naturalization, and protection of Japanese subjects abroad.

From the inclosures it is gathered that Japanese citizenship is acquired by a child by birth, if his or her father be a Japanese subject, or, in case the father is unknown or has no nationality, if the mother be a Japanese subject, or, in case both parents are unknown or have no nationality, if the child be born in Japan.

Aliens may acquire Japanese nationality in the following cases:

1. By becoming the wife of a Japanese subject.
2. By becoming the husband of a Japanese woman who is the head of a "house" (or family corporation), at the same time becoming a member of her house.
3. By being acknowledged by his father or mother who is a Japanese subject.
4. By adoption by a Japanese subject.
5. By naturalization.

The adoption of an alien, the marriage of a Japanese woman who is the head of a house to an alien, and the naturalization of an alien can only be effected by permission of the minister of the home department.

Japanese citizenship may be lost by a woman by marriage with an alien, by minors through the change of allegiance of their parents, by any subject of full age who voluntarily acquires foreign nationality. Exceptions to the right of expatriation are made in the cases of males of the age of 17 years and upward who have not performed their service in the army and navy under the law of conscription, and in the cases of those in the civil or military services of the Government who have not obtained permission from their official chiefs.

There does not appear to be any provision of Japanese law imposing forfeiture of citizenship in consequence only of residence in

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foreign parts, whether temporary or permanent. Forfeiture of protection abroad can only follow some overt act manifesting a voluntary intention to renounce Japanese citizenship. Japanese citizenship may be reacquired by permission of the minister of the home department.

I have, etc. LUKE E. WRIGHT.

[Enclosure 1—Translation.]

LAW OF JAPAN No. 21.

[Promulgated July 9, 1898.]

I. A Japanese, in order to adopt an alien or a Japanese woman who is the head of a house, in order to marry an alien, must obtain the permission of the minister of the home department.

II. The minister of the home department may give the permission mentioned in the preceding article, if the following requisites exist as to the alien:

1. He must have had his domicile or residence for at least one full year in Japan.

2. He must be a person of honest behavior.

[Enclosure 2—Translation.]

LAW OF JAPAN No. 66.

[Promulgated April 1, 1899.]

1. A child is a Japanese subject if at the time of his birth his father is such. The same applies if the father, having died before the child's birth, was a Japanese subject at the time of his death.

2. If the father before the birth of the child loses his Japanese nationality by divorce or by a dissolution of adoption, the provisions of the preceding article apply with relation back to the beginning of the pregnancy.

The provisions of the foregoing paragraph do not apply if both parents quit the house, unless the mother returns to the house before the birth of the child.

3. When the father is unknown or has no nationality, the child is a Japanese subject if the mother is such.

4. If both parents of a child born in Japan are unknown or have no nationality, the child is a Japanese subject.

5. An alien acquires Japanese nationality in the following cases: (1) By becoming the wife of a Japanese; (2) by becoming the husband of a Japanese woman who is the head of the house, at the same time entering her house; (3) by being acknowledged by his father or mother who is a Japanese subject; (4) by adoption by a Japanese subject; (5) by naturalization.

6. The requisites for an alien's acquiring Japanese nationality by acknowledgment are as follows: (1) The child must be a minor ac-

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cording to the law of his nationality; (2) the child must not be the wife of an alien; (3) the parent who first acknowledges the child must be a Japanese subject; (4) if both parents acknowledge the child at the same time, the father must be a Japanese subject.

7. With the permission of the minister of the home department, an alien may be naturalized on the following conditions: (1) He must have had his domicile in Japan for five consecutive years; (2) he must be at least twenty years old and a person of full capacity by the law of his nationality; (3) he must be a person of honest behavior; (4) he must have either property or working ability sufficient for an independent livelihood; (5) he must have no nationality or must lose his nationality on acquiring Japanese nationality.

8. A wife of an alien can be naturalized only together with her husband.

9. An alien who has at the time his domicile in Japan can be naturalized, even though the conditions specified in article 7, No. 1, do not exist, in the following cases: (1) If one of his parents is or has been a Japanese subject; (2) if his wife is or has been a Japanese subject; (3) if he was born in Japan; (4) if he has resided in Japan for ten consecutive years.

The persons mentioned in the preceding paragraph under Nos. 1 to 3 can be naturalized only if they have resided in Japan for three consecutive years; but this does not apply, if a parent of a person mentioned in No. 3 was born in Japan.

10. If a parent of an alien is a Japanese subject and such alien has his domicile at the time in Japan, he may be naturalized even though the conditions specified in article 7, Nos. 1, 2, and 4, do not exist.

11. The minister of the home department may, with the sanction of the Emperor, permit the naturalization of an alien who has done specially meritorious services to Japan, without regard to the provisions of article 7.

12. Public notice of a naturalization must be given. A naturalization can be set up against a third person acting in good faith only after such notice.

13. The wife of a person who acquires Japanese nationality acquires it together with her husband, unless she expresses a contrary intention within one month from the time when she had notice of her husband's acquisition of Japanese nationality.

These provisions do not apply if the law of the wife's nationality provides to the contrary.

14. If the wife of a person who has acquired Japanese nationality did not herself acquire it according to the provisions of the preceding article, she may be naturalized even though the conditions specified in article 7 do not exist as to her.

15. A child of a person who acquires Japanese nationality acquires it together with his parent, if the child is a minor according to the law of his nationality.

This provision does not apply if the law of the child's nationality provides to the contrary.

16. A person naturalized, a person who as being the child of a naturalized person has acquired Japanese nationality, or a person who has become the adopted child of a Japanese or the husband of a Japanese woman who is the head of the house has not the follow-

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ing rights: (1) The right to become a minister of state, a minister of the imperial household, or keeper of the privy seal; (2) the right to become president, vice-president, or a member of the privy council; (3) the right to hold the position of a general or admiral; (4) the right to become president of the supreme court, of the board of accounts, or of the administrative litigation court; (5) the right to hold the position of court councillor; (6) the right to be elected as or to vote for a member of the imperial diet.

17. The minister of the home department, with the sanction of the Emperor, may except from the restrictions of the preceding article a person who has been naturalized under the provisions of article 11, after five years from the time when he acquired Japanese nationality, or any other person after ten years.

18. A Japanese woman who marries an alien loses thereby her nationality.

19. A person who by marriage or adoption has acquired Japanese nationality loses it on divorce or the dissolution of the adoption only in case he thereby acquires a foreign nationality.

20. A person who voluntarily acquires a foreign nationality loses thereby his Japanese nationality.

21. The wife or child of a person who loses his Japanese nationality loses the Japanese nationality on acquiring the nationality of such person.

22. The provisions of the preceding article do not apply to the wife or child of a person who loses his Japanese nationality by divorce or the dissolution of adoption, unless the wife in case of dissolution of adoption of her husband does not procure a divorce or the child quits the house, following his father.

23. If a child who is a Japanese subject acquires by acknowledgment of a foreign nationality, he loses his Japanese nationality, but this does not apply to a person who has become the wife of a Japanese subject, the husband of a Japanese woman being the head of the house, or the adopted child of a Japanese subject.

24. Nothwithstanding the provisions of the preceding five articles, a male person of the age of seventeen years or upwards loses his Japanese nationality only if he has already performed his service in the army or navy or is not bound to perform such service.

25. A person who holds a civil or military position can lose his Japanese nationality only on obtaining the permission of his official chief.

A person who has lost Japanese nationality by marriage, but after the dissolution of such marriage has domiciled in Japan may, by the permission of the minister of the home department, recover Japanese nationality.

26. If a person who has lost Japanese nationality according to the provisions of articles 20 or 21 has a domicile in Japan, he may, with the permission of the minister of the home department, recover Japanese nationality, but this does not apply to a person mentioned in article 16 who has lost the Japanese nationality.

27. The provisions of articles 13 to 15 apply correspondingly to the cases mentioned in the preceding two articles.

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LIBERIA.

Mr. Lyon, minister resident at Monrovia, to Mr. Bacon, Acting Secretary of State, September 10, 1906.

THE AMERICAN LEGATION,
Monrovia, Liberia, September 10, 1906.

SIR: I have the honor to transmit forthwith a report, pursuant to instructions in your circular July 9, 1906, on the subject of citizenship.

1. The laws relating to citizenship in the Republic of Liberia are contained in Article V of the constitution of the commonwealth, and are as follows:

SECTION 12. No person shall be entitled to hold real estate in this Republic unless he be a citizen of the same. Nevertheless this article shall not be construed to apply to colonization, missionary, educational, or other benevolent institutions so long as the property or estate is applied to its legitimate purpose.

SECTION 13. The great object in forming these colonies being to provide a home for the dispersed and oppressed children of Africa, and to regenerate and enlighten this benighted continent, none but persons of color shall be admitted to citizenship in this Republic.

2. Laws relating to the loss of citizenship are embodied in two statutory enactments in the general statutes, and are as herein transcribed.

(*a*) Under infamous and heinous crimes, to wit:

Any person or persons who shall be convicted of committing the following crimes are hereby disfranchised, viz, murder, treason, burglary, arson, rape, administering poison with intent to destroy life, slave trading, forgery, housebreaking, assault with intent to kill, perjury, larceny, receiving stolen goods, robbery, child stealing, embezzlement, obtaining money under false pretence.

(*b*) Article I, an act relating to expatriation:

It is enacted by the Senate and House of Representatives of the Republic of Liberia in legislature assembled:

SECTION 1. Any person or persons, citizens of this Republic, who shall remove to another government and take the oath of allegiance, shall not be entitled to the privileges of citizenship in this—and should such persons again return, they shall not be entitled to the elective franchise until they have again taken the oath of allegiance to this Government and remained in the Republic at least twelve months thereafter.

2. Should any person or persons who had left the Republic again return and refuse to take the oath of allegiance, declaring that he or they had not become citizens of any other government and there should be any doubt respecting the fact, said person or persons shall be questioned as to the truth of the same before some justice of the peace and his or their answer in the negative shall be recorded by the registrar; and should it be afterwards found that he or they had taken an oath of allegiance to any foreign government, all his or their real property in the Republic shall be confiscated and he or they debarred forever from citizenship therein.

3. There are no laws in Liberia on the subject of the renunciation of citizenship therein.

4. There are no statutory enactments in Liberia touching the effect on citizenship therein of residence in foreign countries. According to the attorney-general, Liberia follows the precedents of England and the United States where applicable and is guided by the principles laid down by Wharton and other writers on international law.

5. As to the practice of Liberia in protecting her citizens abroad, she has no laws on the subject, and upon the authority of the attor-

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ney-general no occasions have arisen in which the Republic has acted, and therefore has practice.

6. Concerning naturalization and the acquisition of citizenship in Liberia, there are three statutory enactments, as follows:

(*a*) General statutes, Article IV, under the head "Pertaining to the apportionment and improvement of lands," reads as follows:

SECTION 3. That women not having husbands immigrating to this Republic with permission and attached to no family besides their own shall receive each a town lot or two acres of farm lands on their own account, and one acre on account of each of their children—and unmarried men of the age of twenty-one years arriving in the Republic from aboard, or attaining their majority while resident in the same, and having taken the oath of allegiance, shall be admitted to draw and hold a building lot or five acres of farm land on the same conditions as married men. In case of marriage afterwards, such a person is to draw on account of his family no additional lands, but shall be entitled to hold whatever his wife may have previously drawn in her own rights or inherited from a former husband or other person, provided she shall not have alienated such lands at the time of her marriage.

(*b*) General statutes, joint resolution regulating immigrants' expenses:

It is resolved by the Senate and House of Representatives of the Republic of Liberia in legislature assembled:

SECTION 1. That from and immediately after the passage of this joint resolution, any immigrant or immigrants coming into the Republic of Liberia must first take oath of allegiance to the Republic and abjuration of the sovereign or state whence he comes, after which he may receive aid from the Government as such. The immigrant agent or agents shall keep a true and correct account of all expenses incurred for the benefit of said immigrant or immigrants. He shall make a quarterly report in duplicate of all money or moneys, goods, wares, and merchandise received for and on account of said immigrant or immigrants, stating specifically what he received and paid out. The original report shall be forwarded to the Secretary of the Treasury, and duplicate to the superintendent of the county, territory, or district where said immigrant or immigrants reside, which report shall be entered in a book provided for that purpose.

SECTION 2. It is further resolved that any immigrant or immigrants remaining in the Republic of Liberia for a period of five years from the time of his, her, or their arrival into said Republic, the benefit received from the Government by said immigrant or immigrants so remaining shall be gratis; but should any of them declare their intention to permanently leave the Republic before the expiration of five years after arriving into said Republic, the value of the benefits received from the Government from said immigrant or immigrants shall be estimated and considered a debt due the Government by said immigrant or immigrants, which shall be recoverable before any tribunal having competent jurisdiction.

Any law to the contrary not withstanding.

Approved, January 25, 1906.

(*c*) General statutes, an act of naturalization admitting aliens to become citizens of the Republic of Liberia:

Whereas it is apparent and absolutely necessary from past experience in the political history of Liberia that some uniform system should be inaugurated which will facilitate the growth of our infant country; and whereas the necessity for the twelfth and thirteenth sections of article 5 of the constitution of Liberia.

It is enacted by the Senate and the House of Representatives of the Republic of Liberia in legislature assembled:

SEC. 1. That after the first day of January, A. D. 1878, aliens may be admitted to become citizens of the Republic of Liberia in the following manner, and not otherwise. The applicant for citizenship shall declare on oath before any one of the clerks of the court of quarter sessions and common pleas of the respective counties of this Republic one year at least prior to his admission that it is bona

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fide his intention to become a citizen of the Republic of Liberia, and to renounce forever his allegiance and fidelity to any foreign prince, potentate, State, or sovereignty of which the alien may be at the time a citizen or subject, and for which service the applicant shall pay the clerk 50 cents.

SEC. 2. The alien shall at the time of his application to be admitted declare on oath before one of the clerks of court, as specified above, that he will support the constitution of the Republic of Liberia, and that he absolutely and entirely renounces and abjures all fealty to every foreign prince, potentate, State, or sovereignty of which he was citizen or subject, which proceedings shall be recorded by the clerk of the court (in a suitable book provided by Government for said purpose), and it shall be the duty of the clerk before said alien shall have taken the oath of allegiance and abjuration to be fully satisfied that every such alien has resided in the Republic of Liberia at least three years prior to his application for citizenship; that during said time the applicant has behaved as a man of good moral character; that he is attached to the principles of the Republic of Liberia and well disposed to the good order and happiness of the same. Provided, nevertheless, the oath of the applicant shall in no case be allowed to prove his time of residence in the Republic.

SEC. 3. It is further enacted that the secretary of state shall furnish each clerk of court with a proper form of application and oath, and the applicant shall be required to sign a copy of said form of application, and said copy shall be transmitted to the secretary of state to be duly filed in his office. And it shall be the duty of the clerk of court to strictly conform to the forms of application and oath as shall be furnished them by the secretary of state.

SEC. 4. It is further enacted, that it shall be the duty of the clerks of courts to transmit forthwith to the secretary of state an authenticated copy from the records of his office of the nature of the oath and abjuration of the applicant for citizenship.

SEC. 5. It is further enacted, that the provisions of this act shall not take effect until after the first Monday in January, A. D. 1878.

Approved January 27, 1876.

It being impossible to secure a copy of the statutes, it has been necessary to make these transcripts for the Department.

I have the honor, etc.,

ERNEST LYON,
Minister Resident.

MEXICO.

[Enclosures in despatch from Mr. Thompson, ambassador to Mexico, November 24, 1906.]

CONSTITUTION.

[Translation.]

TITLE I. SECTION II.—*Mexicans.*

ART. 30. The following are Mexicans:

I. All those born, within or without the Republic, of Mexican parents.

II. Foreigners who are naturalized in conformity with the laws of the federation.

III. Foreigners who acquire real estate in the Republic, or have Mexican children, provided they do not declare their intention to retain their nationality.

ART. 31. It is the duty of every Mexican—

I. To defend the independence, the territory, the honor, the rights, and the interests of his country.

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II. To contribute, in the proportional and equitable manner provided by law, toward the public expenses of the federation, and of the State, and the municipality in which he resides.

ART. 32. Mexicans shall, under equal circumstances, be preferred to foreigners for all public positions, offices, or commissions, in which citizenship is not an essential prerequisite. Laws shall be enacted to improve the condition of industrious Mexicans by rewarding those who distinguish themselves in any science or art, encouraging labor, and founding colleges and practical schools of arts and trades.

SECTION III.—*Foreigners.*

ART. 33. Those who do not possess the qualifications set forth in article 30 are foreigners. They are entitled to the guaranties established by Section I, title 1, of the present constitution, except that in all cases the Government has the right to expel pernicious foreigners. They are under obligation to contribute to the public expenses in the manner which the laws may provide, and to obey and respect the institutions, laws, and authorities of the country, submitting to the decisions of the courts, and being allowed no other remedy than such as are granted by the laws to Mexican citizens.

SECTION IV.—*Mexican citizens.*

ART. 34. All persons are citizens of the Republic who are Mexicans, and—

I. Have completed the age of eighteen years if they are married, or of twenty-one if not married.

II. Have an honest means of livelihood.

ART. 35. The following are prerogatives of the citizen:

I. To vote at popular elections.

II. To be eligible for any office or position of popular election, and for appointment to any other position or commission when possessing the qualifications required by law.

III. To associate with others to discuss the political affairs of the country.

IV. To enlist in the army or in the national guard for the defense of the Republic and its institutions.

V. To exercise the right of petition in matters of all kinds.

ART. 36. It shall be the duty of every citizen of the Republic:

I. To register in the list of the inhabitants of the municipality in which he lives, stating the property which he owns, if any, or the industry, profession, or labor by which he subsists.

II. To enlist in the national guard.

III. To vote at popular elections in the district to which he belongs.

IV. To fill the federal offices to which he may be elected, and which in no case shall be gratuitous.

ART. 37. The character of citizen is lost:

I. By naturalization in a foreign country.

II. By officially serving the government of another country or accepting its decorations, titles, or employment without previous permission from the Federal Congress, excepting literary, scientific, and humanitarian titles, which may be accepted freely.

ART. 38. The law shall determine the cases and the form in which the rights of citizenship may be lost or suspended, and the manner in which they may be regained.

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LAW CONCERNING ALIENSHIP AND NATURALIZATION, OF MAY 28, 1886.

[Translation.]

DEPARTMENT OF STATE AND OF FOREIGN RELATIONS,
CHANCELLOR'S OFFICE.

The President of the Republic has been pleased to transmit to me the following decree:

Porfirio Diaz, President of the United States of Mexico, to its inhabitants, know ye, that the Congress of the Union has decreed as follows:

The Congress of the United States of Mexico decrees the following law concerning aliens and naturalization:

CHAPTER I.—*Mexicans and aliens.*

ARTICLE 1. The following are Mexicans:

I. Those born in the national territory of a father who is a Mexican by birth or by naturalization.

II. Those born in the national territory of a Mexican mother and of a father who is not legally known under the laws of the Republic. Those born of unknown parents, or of parents of unknown nationality, shall be classed under this head.

III. Those born outside of the Republic, of a Mexican father who has not lost his nationality. If he has lost his nationality the children shall be considered aliens, but may, nevertheless, elect to be Mexicans within one year from the day on which they attain the age of 21 years, provided they make a declaration to that effect before the diplomatic or consular agents of the Republic, if they reside abroad, or before the department of [foreign] relations, if they reside in the national territory.

If the children to whom this section relates reside in the national territory, and on attaining their majority have accepted any public office, or have served in the army, navy, or national guard, they shall be regarded in consequence of such acts as Mexicans, without the necessity of any further formalities.

IV. Those born outside the Republic, of a Mexican mother, if the father is unknown and if the mother has not lost her nationality under the provisions of this law. If the mother has been naturalized in a foreign country her children will be aliens, but they shall have the right to elect to be Mexicans on the same terms and conditions as those provided by the foregoing section.

V. Mexicans who having lost their national character under the provisions of this law recover it by fulfilling the conditions fixed by this law, according to the various cases which may arise.

VI. Foreign women who have married Mexicans, they retaining their Mexican nationality even during widowhood.

VII. Those born outside of the Republic, but who, having been residents therein in 1821, took the oath to the act of independence, have continued their residence in the national territory and have not changed their nationality.

VIII. Mexicans who, residing in the territories ceded to the United States by the treaties of February 2, 1848, and November 30, 1853, fulfilled the conditions required by those treaties for the preservation

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of their Mexican nationality. Under this head shall be classed Mexicans who continue to reside in territory belonging to Guatemala, and citizens of Guatemala remaining in territory belonging to Mexico under the treaty of September 27, 1882, provided such citizens comply with the requirements stipulated in article 5 of that treaty.

IX. Aliens who are naturalized in accordance with the present law.

X. Aliens acquiring real estate in the Republic, provided they do not declare their intention of retaining their nationality. At the time of making the acquisition the alien shall declare to the officiating notary or judge whether he does or does not wish to acquire Mexican nationality as granted him by Section III of article 30 of the constitution, and the alien's decision on this point shall appear in the document.

If he chooses Mexican citizenship, or if he omits making any declaration on the subject, he may, within one year, apply to the department of [foreign] relations, in order to comply with the requirements of article 19, and be deemed a Mexican.

XI. Aliens having children born in Mexico, provided they do not prefer to retain their alien character. At the time of registering the birth, the father shall declare his decision on this point before the judge of civil registration, and such decision shall appear in the document itself; and if he elects to acquire Mexican citizenship, or if he omits making any declaration on the subject, he may, within one year, apply to the department of [foreign] relations in order to comply with the requirements of article 19, and be deemed a Mexican.

XII. Aliens serving the Mexican Government in an official capacity, or accepting from it titles or public offices, provided that within one year after accepting the titles or public offices conferred upon them, or after beginning to serve the Mexican Government in an official capacity, they apply to the department of [foreign] relations in order to comply with the requirements of article 19, and be deemed Mexicans.

ART. 2. The following are aliens:

I. Those born outside of the national territory who are subjects of foreign governments and who have not been naturalized in Mexico.

II. The children of an alien father, or of an alien mother and unknown father, born in the national territory, until they reach the age at which, according to the law of the nationality of the father or of the mother, as the case may be, they become of age. At the expiration of the year following that age they shall be regarded as Mexicans, unless they declare before the civil authorities of the place where they reside that they follow the citizenship of their parents.

III. Those absent from the Republic without permission or commission from the Government, excepting in order to prosecute their studies, or in the interests of the public, or for the establishment of trade or industry, or in the practice of a profession, who allow ten years to elapse without asking permission to prolong their absence. Such permission shall not exceed five years for each request, and after the first is granted good and valid reasons shall be required in order to obtain another permission.

IV. Mexican women who have married aliens, they retaining their alien character even during widowhood. If the marriage is dissolved, the Mexican woman may recover her citizenship, provided

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that, in addition to fixing her residence in the Republic, she declares before the judge of civil registration of her domicile that she desires to recover her citizenship.

A Mexican woman who has not acquired by marriage the nationality of her husband under the laws of his country shall retain her own nationality. A change in the nationality of the husband after marriage involves a like change in the nationality of the wife and of the minor children subject to the paternal power, provided they reside in the country in which the husband or father, as the case may be, has been naturalized, saving the exception provided in the preceding paragraph of this section.

V. Mexicans who become naturalized in other countries.

VI. Mexicans serving foreign governments officially in any political, administrative, judicial, military, or diplomatic capacity, without the permission of Congress.

VII. Mexicans accepting foreign decorations, titles, or offices, without the previous permission of the Federal Congress, excepting literary, scientific, and humanitarian titles, which may be accepted freely.

ART. 3. For the purpose of determining the place of birth in the cases stated in the foregoing articles, national vessels, without any distinction, are hereby declared to be a part of the national territory, and those who are born on board of them shall be regarded as having been born within the Republic.

ART. 4. By virtue of the right of extra territoriality enjoyed enjoyed by diplomatic agents, the children of the ministers and employees of the legations of the Republic shall, likewise, never be deemed to have been born outside of the country, so far as regards the operation of this law.

ART. 5. The nationality of artificial persons or entities (corporations) is regulated by the law authorizing their creation; hence, all corporations created under the laws of the Republic shall be Mexican, provided that, in addition, they have their legal domicile in the Republic.

Foreign corporations enjoy in Mexico the rights granted them by the laws of the country of their domicile, provided such laws do not conflict with those of the nation.

CHAPTER II.—*Expatriation.*

ART. 6. The Mexican Republic recognizes the right of expatriation as natural to, and inherent in, every man, and as necessary to the enjoyment of individual liberty; hence, just as it permits its inhabitants to exercise that right, allowing them to leave its territory and settle in foreign countries, so likewise, it protects the rights of aliens of all nationalities to come and settle within its jurisdiction. The Republic consequently receives the subjects and citizens of other States, and naturalizes them in accordance with the provisions of this law.

ART. 7. Expatriation and the subsequent naturalization obtained in a foreign country do not exempt a criminal from the extradition, prosecution, and punishment to which he is liable under the treaties, international practices, and the laws of the country.

ART. 8. Citizens naturalized in Mexico, although they may be abroad, are entitled to the same protection from the Government of

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the Republic as Mexicans by birth where either their persons or their property are involved. Nevertheless, if they return to their native country, they remain subject to liabilities which they may have incurred under the laws of that country before their naturalization.

ART. 9. The Mexican Government will protect Mexican citizens abroad by such means as are authorized by international law. The President, when he sees fit, will make use of those means, provided that they do not constitute acts of hostility; but if diplomatic intervention should not suffice, and if such means should prove inadequate, or if the offenses against Mexican nationality should be so grave as to demand more rigorous measures, the President shall immediately make a report to Congress, transmitting the documents on the subject for constitutional purposes.

ART. 10. The naturalization of an alien is rendered void by his residing for two years in the country of his birth, excepting where he has an official commission from the Mexican Government, or where he has its permission.

CHAPTER III.—*Naturalization.*

ART. 11. Any alien who complies with the requirements fixed by this law may be naturalized in the Republic.

ART. 12. He must make a written communication to the common council of his place of residence at least six months before applying for naturalization, declaring his intention to become a Mexican citizen and to renounce his foreign nationality. The common council shall give him a certified copy of such declaration, retaining the original in its archives.

ART. 13. At the expiration of the six months, and when the alien has resided two years in the Republic, he may petition the Federal Government to grant him his certificate of naturalization. In order to obtain it he must first appear before the district judge in whose jurisdiction he is, and undertake to prove the following facts:

I. That under the laws of his country he enjoys full civil rights, being of age.

II. That he has resided in the Republic at least two years, and has conducted himself properly.

III. That he has a business, trade, profession, or income to support him.

ART. 14. He shall annex to the petition which he presents to the district judge, asking that those facts be investigated, the certified copy issued by the common council, mentioned in article 12, and shall annex, besides, an express renunciation of all submission, obedience, and fealty to every foreign government, especially that of which the petitioner has been a subject, of all protection other than the laws and authorities of Mexico, and of every right granted to aliens by treaties or international law.

ART. 15. The district judge after the petitioner has confirmed his petition, shall order the testimony of witnesses to be taken before the district attorney (promotor fiscal) with regard to the points recited in article 13, and, if he thinks necessary, he may call upon the common council for the report on those points mentioned in article 12.

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The judge shall also admit such other testimony as the petitioner may present with regard to the points mentioned in article 13, and shall require the opinion of the district attorney.

ART. 16. The judge, if his decision is favorable to the petitioner, shall forward the original record to the department of [foreign] relations, that it may isue the certificate of naturalization if, in its opinion, there is no legal cause to prevent it. The petitioner shall send a petition to that department through the said judge, requesting the certificate of naturalization and confirming his renunciation of his alien character, and promising adhesion, obedience, and submission to the laws and authorities of the Republic.

ART. 17. Aliens serving in the national merchant marine may be naturalized after one year of service on board ship, instead of the two required by article 13. The district judge of any of the ports at which the vessel touches shall be competent to perform the formalities incident to naturalization, and any of the common councils of those ports may receive the declaration referred to in article 12.

ART. 18. Aliens naturalized by virtue of the law, and those who have the right to elect Mexican citizenship, are not included in the provisions of articles 12, 13, 14, 15, and 16; consequently the children of a Mexican man or woman who has lost his or her citizenship, referred to in Section VI of article 1; foreign women who marry Mexicans mentioned in Section VI of the same article; the children of an alien father or of an alien mother and unknown father, born in the national territory, referred to in Section II of article 2; and Mexican women who are the widows of aliens, referred to in Section IV of article 2—shall be deemed naturalized, for all legal purposes, upon simply complying with the requirements fixed by these provisions, without the necessity of further formalities.

ART. 19. Aliens who come under the provisions of Sections X, XI, and XII of article 1 may petition the department of [foreign] relations for their certificate of naturalization within the period fixed by those sections. They shall annex to their petition a document proving that they have acquired real estate, or that they have had children born to them in Mexico, or that they have accepted some public position, as the case may be. They shall present, moreover, the renunciation and promise required by articles 14 and 16, as a preliminary to naturalization.

ART. 20. Absence in a foreign country by permission of the Government does not interrupt the residence required by article 13, provided it does not exceed six months during the period of two years.

ART. 21. No certificates of naturalization shall be granted to the subjects or citizens of a nation with which the Republic is in a state of war.

ART. 22. Nor shall they be given to persons judicially reputed and declared in other countries to be pirates, slave dealers, incendiaries, coiners of false money, or counterfeiters of bank notes or of other papers representing money, nor to murderers, kidnappers, or robbers. Naturalization fraudulently obtained by an alien in violation of law is legally void.

ART. 23. Certificates of naturalization shall be issued gratuitously, it not being permissible to collect any fee for them under pretense of costs, registration, stamp, or any other appellation.

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ART. 24. The act of naturalization being strictly personal, the person concerned can be represented by another person only by means of a special and sufficient power of attorney for that act, containing the renunciation and promise which the party interested should make in person, according to articles 14 and 16; but the power of attorney shall in no case supply the want of the alien's actual residence in the Republic.

ART. 25. The character of citizen or alien is not transmissible to third persons; consequently, a citizen can not, as such, enjoy the rightsof an alien, nor an alien, as such, the privilege of a citizen.

ART. 26. Change of nationality has no retroactive effect. The acquisition and restoration of the rights of Mexican citizenship can take effect only from the day following that on which all the conditions and formalities prescribed by this law for obtaining naturalization have been complied with.

ART. 27. Colonists coming into the country under contracts made by the Government, and whose expenses of transportation and settlement are defrayed by the Government, shall be deemed Mexicans. Their engagement to renounce their original nationality and to adopt the Mexican nationality shall appear in their enrollment contract, and upon settling in the colony they shall execute before the competent authorities the renunciation and promise required by articles 13 and 16, which shall be forwarded to the department of [foreign] relations, that it may issue a certificate of naturalization in favor of the party interested.

ART. 28. Colonists coming into the country on their own account, or under the auspices of private companies or enterprises not subsidized by the Government, as well as immigrants of all classes, may be naturalized, according to circumstances, in conformity with the provisions of this law. Colonists already settled here are likewise subject to those provisions, so far as they do not conflict with the rights which they have acquired under their contracts.

ART. 29. Naturalized aliens shall be Mexican citizens as soon as they possess the qualifications required by article 34 of the constitution and they shall be on an equality with Mexicans in all their rights and obligations; but they shall not be eligible to hold such offices or stations as, under the laws, require native citizenship, unless they were born within the national territory and their naturalization was effected in accordance with Section II, of article 2.

CHAPTER IV.—*Rights and obligations of aliens.*

ART. 30. Aliens enjoy in the Republic the civil rights belonging to Mexicans and the guaranties granted by section 1, of Title I, of the constitution, without prejudice to the Government's right to expel a mischievous alien.

ART. 31. Aliens shall not be compelled to reside in the Republic in order to acquire uncultivated national lands, real estate, or vessels, but they shall be subject to the restrictions prescribed by the laws in force, it being understood that every lease of real estate to an alien shal be deemed an alienation if the term of the contract exceeds ten years.

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ART. 32. The federal law alone can modify or abridge the civil rights enjoyed by aliens by virtue of the principle of international reciprocity, and in order that the aliens may thereby be subject in the Republic to the same disqualifications as the laws of their own country impose on Mexicans residing there; hence, the provisions of the civil code and of the code of civil procedure of the [federal] district on this subject have a federal character, and shall be obligatory throughout the whole Union.

ART. 33. Aliens may be domiciled in the Republic for all legal purposes without losing their nationality. The acquisition, change, and loss of domicile are governed by the laws of Mexico.

ART. 34. When the suspension of individual guaranties is declared under the circumstances under which it is permitted by article 29 of the constitution, aliens as well as Mexicans are subject to the provisions of the law decreeing the suspension, without prejudice to the stipulations of treaties.

ART. 35. Aliens are bound to contribute to the public expenses in the manner prescribed by the laws, and to obey and respect the institutions, laws, and authorities of the country; they must submit to the judgments and decisions of the courts, and have no right to have recourse to other measures than those which the laws grant to Mexicans. They may appeal to the diplomatic channel only in the case of denial of justice or intentional delay in its administration, after exhausting in vain the ordinary means created by the laws and in the manner prescribed by international law.

ART. 36. Aliens do not enjoy the political rights of Mexican citizens; hence, they can not vote for, nor be elected to, any office filled by election of the people, nor can they be appointed to any other office or position in the Government service; nor can they belong to the army, navy, or national guard; nor can they assemble to discuss the political affairs of the country, nor exercise the right of petition regarding such matters. This is to be understood as not affecting the provisions of article 1, Section XII, and article 19, of this law.

ART. 37. Aliens are exempt from military service. Domiciled aliens, however, are bound to perform police service when the security of property or the maintenance of order in the town in which they are residing is involved.

ART. 38. Aliens taking part in the civil dissensions of the country may be expelled from its territory as mischievous aliens, and are subject to the laws of the Republic as to the offenses which they commit against it, without prejudice to the regulation of their rights and obligations during a state of war, by international law and treaties.

ART. 39. The laws ordering the registration of aliens are repealed. The ministry of [foreign] relations alone can issue certificates of any given nationality in favor of the aliens requesting them. These certificates constitute a legal presumption of foreign citizenship, but do not exclude proof to the contrary. The final proof of any given nationality is made before the competent courts and by the means prescribed by the laws and treaties.

ART. 40. This law does not grant to aliens the rights denied them by international law, treaties, or the legislation in force in the Republic.

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CHAPTER V.—*Temporary provisions.*

ART. 1. Aliens who have acquired real estate, who have had children born to them in Mexico, or who have held any public office, being those referred to in sections X, XI, and XII of article 1 of this law, are bound to declare within six months after the promulgation of this law, provided they have not done so previously, to the civil authorities of their place of residence whether they wish to acquire Mexican citizenship or to retain their own. In the former case they must immediately ask for their certificate of naturalization in the form prescribed in article 19 of this law. If they fail to make the declaration in question, they shall be considered Mexicans, except in those cases where there has been an official declaration on this point.

ART. 2. Colonists residing in the country, being those referred to in the last sentence of article 28 of this law, shall declare in the manner prescribed by the preceding article under what nationality they wish to be classed, and if it should be the Mexican, they shall also ask for their certificate of naturalization, as prescribed by the preceding article.

ART. 3. The Executive, in issuing the necessary regulations for the execution of this law, shall be careful to give the proper directions in order that the local authorities, so far as they are concerned, may duly execute it.

[Signed] JUAN JOSÉ BAZ, *Deputy, President.*
[Signed] PEDRO SANCHEZ CASTRO, *Senator, President.*
[Signed] ROBERTO NUÑEZ, *Deputy, Secretary.*
[Signed] GILDARDO GÓMEZ, *Senator, Secretary.*

Wherefore, I order it to be printed, published, circulated, and duly executed.

Given in the national palace of Mexico, May 28, 1886.

PORFIRIO DIAZ.

To Citizen IGNACIO MARISCAL,
Secretary of State and of the
Department of Foreign Relations.

In communicating it to you for your information and for the necessary purposes, I assure you of my great consideration.

MARISCAL.

MOROCCO.

Mr. Philip, chargé d'affaires, to Mr. Root, Secretary of State, August 3, 1906.

AMERICAN LEGATION,
, *Tangier, August 3, 1906.*

SIR:

* * * * * * *

There are, strictly speaking, no Moroccan laws relating to citizenship of Moorish subjects in Morocco. The fundamental laws of this non-Christian country are based entirely upon the Islamitic code, no part of which treats of the subject of citizenship.

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There are, however, numerous treaties and conventions between the various Christian countries and the Moorish Empire, by means of which citizenship in this country is defined; but, as I understand, from the above-acknowledged instructions, that it is not the desire of the Department to call for a report upon such lines, I will therefore confine these remarks to general conditions existing, which may possibly be of some use in connection with the information desired.

(1) Citizenship in Morocco may be said to be governed by the laws pertaining to the same in other countries, with the exception that all persons residing in Morocco who can not prove foreign citizenship or protection are considered ipso jure as Moorish subjects.

(2 and 3) Moorish subjects lost their nationality only by becoming naturalized in, or protected by, another country having treaty relations with the Moorish Empire.

It was established by the Convention of Madrid, concluded July 3, 1880, as follows:

ARTICLE XV.

Any subject of Morocco who has been naturalized in a foreign country, and who shall return to Morocco, shall, after having remained for a length of time equal to that which shall have been regularly necessary for him to obtain such naturalization, choose between entire submission to the laws of the Empire and the obligation to quit Morocco, unless it shall be proved that his naturalization in a foreign country was obtained with the consent of the Government of Morocco.

Foreign naturalization heretofore acquired by subjects of Morocco according to the rules established by the laws of each country, shall be continued to hetm as regards all its effects without any restriction.

The above ruling has never yet been acted upon, and should this at any time be contemplated seriously, a large number of naturalized people, American and others, residing in Morocco, would be affected thereby.

(4 and 5) Residence in foreign parts does not affect the nationality of Moorish subjects, and the Moorish Government has no means of protecting its subjects permanently residing in other countries, with the exception of a so-called Moorish consul at Gibraltar and a Moorish agent at Cairo, Egypt.

I am, etc.,

HOFFMAN PHILIP.

NETHERLANDS.

[Enclosures in despatch from Mr. Hill, minister to the Netherlands, August 31, 1906.]

[Translation.]

LAW OF DECEMBER 12, 1892, REGARDING NETHERLANDS CITIZENSHIP AND RESIDENTSHIP.

[Official Gazette No. 268.]

In the name of Her Majesty Wilhelmina, by God's grace Queen of
We, Emma, Queen Dowager, Regent of the Kingdom, make known
the Netherlands, Princess of Orange-Nassau, etc.
to all whom it may concern, that:

Having taken into consideration that it is desirable to establish some general provisions concerning Netherlands nationality in sub-

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stitution for the title of the civil code entitled "On Netherlanders and foreigners," as well as for the law of July 28, 1850 (Official Gazette No. 44), modified by that of May 3, 1851 (Official Gazette No. 46), and that, in accordance with article 6 of the fundamental law, it is necessary to determine by a law who is to be characterized as a resident, while the results of naturalization with regard to the wife and the minor children of the person naturalized also need to be regulated by a law, we have,

For these reasons, with the consent of the Council of State and in common accord with the states-general, established and do establish the following:

ARTICLE 1.

The following are Netherlanders by birth:

(*a*) The legitimate child, the legitimated child, or the natural child acknowledged by the father, whose father is of Netherlands nationality at the time of birth.

(*b*) The legitimate child of a Netherlander who has died within the period of 300 days before the birth of the child.

(*c*) The natural child acknowledged only by the mother, whose mother is of Netherlands nationality at the time of birth.

(*d*) The natural child born within the Kingdom and who is not acknowledged by either the father or the mother.

ARTICLE 2.

The following are likewise Netherlanders:

(*a*) The child of a resident who, whether father or mother, according to the distinctions made in article 1, was born himself or herself of a mother residing in the Kingdom, unless it is ascertained that the child, as a foreigner, belongs to some other country.

(*b*) The child found or abandoned in the Kingdom, as long as his filiation, either as legitimate or legitimated child, or as an acknowledged natural child, shall not have been ascertained.

ARTICLE 3.

Netherlands citizenship by naturalization is acquired by virtue of the going into force of the law which grants it.

For every naturalization the sum of 100 florins is due the public treasury.

The applicant for naturalization must accompany his application with a certificate:

1. That he has attained his majority according to the Netherlands law.

2. That he has lost his Netherlands nationality or that he has during the last five years had his residence or his principal stopping place in the Kingdom or its colonies or possessions in other parts of the world.

3. That he has paid the sum of 100 florins to a receiver of the fees for registration.

In case the applicant belongs to another country, he may be obliged to furnish proof that the laws of such country place no obstacle in the way of naturalization in the Netherlands.

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In case the naturalization is not granted the sum deposited is returned to the applicant.

ARTICLE 4.

Naturalization may also be granted for reasons of state, in which case article 3 is not applicable.

The law by which it is granted regulates the conditions attached to such naturalization in each special case.

ARTICLE 5.

The wife follows the status of her husband during marriage.

No application for naturalization can be made by a married woman.

The naturalization granted to the husband extends ipse jure to his wife.

Article 8 or 9 is applicable in case of dissolution of the marriage.

ARTICLE 6.

The legitimate or legitimated child of a father naturalized as a Netherlander and born before the naturalization of the latter, as well as the natural child acknowledged by a father naturalized as a Netherlander and born before the naturalization of the latter, is considered as being naturalized with him and preserves Netherlands nationality until, having become of age according to the Netherlands law, he declares, within one year after the attainment of his majority, to the mayor or local magistrate of his last place of residence in the Kingdom or its colonies or possessions in other parts of the world, or else to the envoy of the Netherlands or a Netherlands consular officer, that he does not intend to retain his naturalization any longer.

The same provision is applicable to a legitimate or legitimated child whose mother is naturalized after becoming a widow, as also to a natural child acknowledged by the mother only and born before the latter's naturalization.

ARTICLE 7.

Netherlands nationality is lost—

1. By naturalization in another country or, in the case of a minor, by the acquisition of foreign nationality in consequence of the naturalization of the father and mother in another country, in accordance with the distinctions made in article 1.

2. By the marriage of a Netherlands woman who, by or in consequence of her marriage, becomes a foreigner by virtue of article 5.

3. By the voluntary acquisition of a foreign nationality.

4. By the entrance into the military or civil service of a foreign government without our authorization.

5. By the establishment of residence (except in the service of the nation) outside the Kingdom or its colonies or possessions in other parts of the world during ten consecutive years, unless before the expiration of this period the absentee declares his intention to remain a Netherlander to the mayor or local magistrate of his last place of residence in the Kingdom or its colonies or possessions in other parts

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of the world, or else to the envoy of the Netherlands or a Netherlands consular officer in the country where he resides.

From the day on which this declaration has been received the period of ten years begins to elapse anew. In the case of minors the period of ten years begins on the day they have attained their majority, in accordance with the Netherlands law.

ARTICLE 8.

A woman who has lost her Netherlands nationality by or in consequence of her marriage recovers said nationality by the dissolution of the marriage, provided within one year from such dissolution she declares her intention to recover it to the mayor or local magistrate of her place of residence in the Kingdom or its colonies or possesions in other parts of the world, or else to the envoy of the Netherlands or a Netherlands consular officer in the country where she resides.

ARTICLE 9.

A woman who has acquired Netherlands nationality by or in consequence of her marriage preserves such nationality after the dissolution of the marriage unless, within a year after such dissolution, she declares her intention not to preserve it to the mayor or chief local magistrate at her last place of residence in the kingdom or its colonies or possessions in other parts of the world or else to the envoy of the Netherlands or a Netherlands consular officer in the country where she resides.

ARTICLE 10.

A legitimate child, legitimated child, or natural child acknowledged by a Netherlander, born before the naturalization of its father in another country, and who in consequence of this naturalization has also lost Netherlands nationality, recovers such nationality provided it declares, upon becoming of age according to the Netherlands law and within one year after becoming of age, its intention of recovering such nationality to the mayor or chief local authority of its place of residence in the Kingdom or its colonies or possessions in other parts of the world or else to the envoy of the Netherlands or a Netherlands consular officer in the country where it resides.

The same provision is applicable to a legitimate or legitimated child whose mother, having become a widow, is naturalized in another country as well as to a natural child acknowledged only by its mother if the latter has been naturalized in another country.

ARTICLE 11.

Once a year the minister of justice causes to be published in the Official Gazette of the Kingdom the declarations made in accordance with the present law by persons residing abroad.

ARTICLE 12.

All those who do not possess Netherlands nationality according to the present law are foreigners.

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ARTICLE 13.

Those persons are residents who have their domicile in the Kingdom and have had it during the 18 preceding months in the Kingdom or its colonies or possessions in other parts of the world.

ARTICLE 14.

Residentship ceases upon the establishment of the domicile outside the Kingdom.

ARTICLE 15.

A minor, according to the Dutch law, whose father or guardian is a resident is considered as such.

After having attained his majority he remains a resident if he fixes his residence in the kingdom.

ARTICLE 16.

The provisions relating to residenceship found in special laws are applicable exclusively to the cases contemplated in these laws.

TRANSITORY PROVISION.

With the exception of those who, according to the law of September 2, 1854 (Official Gazette No. 129), are considered in the Dutch Indies as natives or assimilated thereto, all persons who at the time the present law takes effect possess Netherlands nationality are Netherlanders according to the present law until they lose Netherlands nationality according to the present law. With regard to those who at said time reside outside of the Kingdom or of its colonies or possessions in other parts of the world, the ten-year period provided in article 7, No. 5, shall begin to run at said time. He who, at the time the present law goes into force, was born in the Kingdom of parents not residing there and has not reached the age of 24 years, acquires Netherlands nationality if, within the period of one year after said time, or, if he is still a minor according to the Netherlands law, within the period of one year after having attained his majority, he declares to the mayor of the place of his residence that he intends to continue residing in the Kingdom.

With regard to foreigners who, at the time the present law goes into force, have complied with the provision of article 8 of the civil code, assimilation with Netherlanders as regards the application of the civil law and of article 19 of the law of August 13, 1849 (Official Gazette No. 39), modified by the law of April 6, 1875 (Official Gazette No. 66), continues as long as they preserve their residence in the Kingdom.

FINAL PROVISION.

Save the provision of the foregoing transitory article, articles 5 to and including article 12, forming the second title of the first book of the civil code, and the laws of July 28, 1850 (Official Gazette No. 44), and May 3, 1851 (Official Gazette No. 46), as well as the law of December 21, 1850 (Official Gazette No. 75), are abrogated upon the going into force of the present law.

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In the laws in which mention is made of a Netherlander either according to the civil code or to the law for the enforcement of article 7 of the fundamental law, laws of July 28, 1850, (Official Gazette No. 44), and of May 3, 1851 (Official Gazette No. 46), this term is replaced by that of "Netherlander according to the law relating to Netherlands nationality and residentship," with the exception of article 22 of the law of April 6, 1875 (Official Gazette No. 66), where the words "according to the civil code" are replaced by "according to the law relating to Netherlands nationality and residentship, as well as those who are born in the colonies or possessions of the Netherlands in other parts of the world, of parents residing there."

This law goes into force on July 1, 1893.

We order and command that the present law be inserted in the Official Gazette and that the ministerial departments, authorities, colleges, and functionaries whom it may concern see strictly to its enforcement.

Given at The Hague, December 12, 1892.

EMMA.

SMIDT,
Minister of Justice.

TAK VAN POORTVLIET,
Minister of the Interior.

Published December 24, 1892.

SMIDT,
Minister of Justice.

[Translation.]

No. LXII.

CIRCULAR OF MAY 20, 1893, NO. 2485, CONCERNING THE LAW OF DECEMBER 12, 1892 (LAW BULLETIN NO. 268), RELATING TO NETHERLANDS NATIONALITY AND RESIDENTSHIP.

APPENDIX TO THE "NETHERLANDS CONSULAR INSTRUCTIONS."

I have the honor to inclose to you herewith a copy of the text, together with a French translation of the law of December 12, 1892 (J. O. No. 268), relating to Netherlands nationality and residentship.

It appears to me very important to call your special attention to the tenor of this law, both because of the exceptional interest which it has for Netherlanders residing abroad and on account of the provisions which it contains, for the carrying out of which the consular officers of the Netherlands are called upon to lend their services.

A1. In the first place, it appears desirable to me to cause all the publicity possible to be given to the provisions of the law relating to the preservation and the loss of Netherlands nationality by Netherlands subjects residing abroad.

To this end I request you to proceed to the publication of a notice to be addressed by you to the Netherlanders residing within your jurisdiction, in order to call their attention to the fact that it is in their interest to make the declaration referred to in article 7, No. 5,

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of the law, as well as, in the proper case, the declarations mentioned in articles 6, 8, 9, and 10.

For the publication of this notice it will be preferable to use an official newspaper, but if this is impossible the publication may be made through official channels. Secondly, I take the liberty of recommending that you have a copy of this notice conspicuously posted up in the office of your ———, in order to attract the attention of the parties concerned.

3. At the consulates where the register prescribed in article 22 of the consular regulations (J. O. 1874, No. 74) has been duly established, the attention of the Netherlands subjects inscribed in this register shall be specially called to the said provision of article 7, No. 5. Every time a new inscription is made in this registry the provision in question should be called to the attention of the Netherlands subject who is being inscribed.

4. Finally, I would request you not to fail to call the attention of interested parties to the said law whenever there is occasion.

B. In regard to the enforcement of the law, I would request you to conform to the following:

1. The declarations which are made to Dutch consular officers, in accordance with articles 6, 7 (No. 5), 8, 9, and 10 of the law, may be made at the option of the party concerned: (*a*) In writing, or (*b*) orally.

In the first case, I request you to send a receipt to the person who has addressed his declaration to you.

In the second case, there shall be drawn up a certificate of the declaration, duly dated and signed both by the person making the declaration and by you who receive it, besides which there shall also be delivered a receipt to the said person.

In case the person making the declaration can not write, or refuses for some reason to sign the certificate, mention of this circumstance should be made in the certificate.

2. The declarations which you will have received in writing, as well as the certificate drawn up in order to substantiate the declarations which have been made to you orally, shall remain on file in your archives.

3. Upon every receipt of a declaration by you the fact shall be communicated by you without delay to ———, to which you belong, stating exactly: (1) The Christian name and surname of the person who has made the declaration; (2) the place and date of his birth; (3) his occupation; (4) his place of residence; (5) the article of the law in pursuance to which the declaration has been made; and finally (6) the date on which it has taken place.

The transmission of this information is necessary in view of the publications to be made by the minister of justice in accordance with article 11 of the law.

As far as the transitory provision of the law is concerned, the period mentioned in the first paragraph of this provision should be considered as beginning July 1, 1893, since in the present case the provision of article 32 of the consular law (J. O. 1871, No. 91, modified by the law of April 11, 1886, J. O. No. 63) can not be considered as being applicable.

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Finally, you may consider yourself authorized to send to me a statement regarding the expenditures incurred in the carrying out of the instructions contained in the present circular.

VAN TIENHOVEN,
Minister of Foreign Affairs.

NICARAGUA.

[Enclosure in despatch from Mr. Caldwell, vice-consul in charge of legation pro tempore, San José, Costa Rica, November 22, 1906.—Translation.]

THE MINISTER OF JUSTICE TO THE MINISTER OF FOREIGN RELATIONS, SEPTEMBER 25, 1906.

MINISTRY OF JUSTICE,
Managua, September 25, 1906.

MR. MINISTER: I have had the honor to receive your polite dispatch under date of the 31st ultimo, in which you are pleased to transmit to me the inquiries addressed to you by the most excellent minister of the United States, accredited to the Government of this Republic, relating to Nicaraguan citizenship.

Complying with your wishes, I proceed to reply to the five questions propounded, in their order; but, first of all, for the sake of greater clearness, permit me to establish a distinction between nationality and citizenship, which, in our legislation, have different meanings.

Nationality is the status peculiar to every person born or naturalized in Nicaragua.

Citizenship is the union of political rights which the constitution confers on Nicaraguans over 18 years of age.

Nationality, then, includes all Nicaraguans; while citizenship is peculiar to some of them.

FIRST POINT.—*Laws relating to nationality in Nicaragua.*

The provisions relative to Nicaraguan nationality are comprised in Title II of the constitution of the Republic, sanctioned March 30, 1905.

According to these provisions, the following are Nicaraguans:

1. Those born in Nicaragua of Nicaraguan parents or of foreigners domiciled therein.

2. The children of a Nicaraguan father or mother, born in a foreign country, if they choose Nicaraguan nationality. (These provisions may be modified by treaties, provided always that reciprocity be established.)

3. The natives of other Republics of Central America who reside in Nicaragua, and do not declare before competent authority their wish to the contrary.

(All those comprised in the foregoing cases are considered as natives.)

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The following are naturalized:

1. Spanish-Americans who express their desire to become naturalized in the country, before the proper authority.

2. Other foreigners who have resided two years in the country and who express the same desire.

3. Those who obtain naturalization papers.

(The latter are granted by the Executive by means of a decree.)

SECOND POINT.—*Causes through which Nicaraguan nationality is lost.*

The following lose Nicaraguan nationality:

1. Nicaraguan women who marry foreigners. (Article I, Law of Foreigners, par. 5.)

2. Naturalized persons who reside five years in the country of their origin, unless they have obtained permission from the Government of Nicaragua. (Art. 31, Law of Foreigners.) However, a native-born Nicaraguan woman who becomes a widow, if she continues to reside in the territory of the Republic or returns thereto, recovers Nicaraguan nationality.

THIRD POINT.—*Does the Nicaraguan law authorize the renunciation of nationality?*

The law does not authorize such renunciation, and a Nicaraguan preserves his nationality wherever he may go; therefore, on returning to the territory of this Republic, he will be subject to the nationality of his origin, although he may have been naturalized in a foreign country. The only exceptions to this general rule are the two cases contemplated in the second question. (Art. 32, Law of Foreigners.)

FOURTH POINT.—*How far does residence in a foreign country affect the nationality of origin?*

Aside from the case of a Nicaraguan woman who marries a foreigner and of a naturalized Nicaraguan who returns to the country of his origin and resides there more than five years without the permission of the Government of Nicaragua, residence in a foreign country does not affect Nicaraguan nationality, and he who possesses this nationality does not lose it even though he become naturalized in a foreign country, for once he sets foot again on the soil of the Republic he is considered as having never left it.

FIFTH POINT.—*Law relating to naturalization.*

In examining the first question it has already been stated who are naturalized Nicaraguans, and it only remains to add that the constitution in this matter is of the most liberal possible. A simple declaration of his desire to become naturalized, made before the civil authority of the Department where he resides, is sufficient for any Spanish-American to be considered as a Nicaraguan. This same declaration is sufficient for other foreigners if they have already lived two years in the country. Nationality is also acquired by means of naturalization papers granted by the Executive.

In regard to citizenship, it may be said to confer upon Nicaraguans the right of suffrage, of being chosen to public offices, and of keeping and bearing arms. (Arts. 14 and 15 of the Constitution.)

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These rights are not lost; however, they are temporarily suspended—

1. By a formal decree of commitment to prison;
2. By a sentence involving disqualification from the exercise of political rights during the period of the sentence;
3. By a sentence which imposes a penalty greater than correctional.
4. For accepting employment from other nations (except those of Spanish-America) without permission from Congress, if the person so accepting resides in Nicaragua; and
5. By reason of mental incapacity. (Art. 16 of the Constitution.)

Having thus complied with your wishes, I take pleasure in signing myself, with the highest consideration,

Your most respectful and obedient servant,

ISIDRO A. OVIEDO.

To the MINISTER OF FOREIGN RELATIONS.

[Translation.*]

CONSTITUTION (1905).

TITLE II.—*Nicaraguans.*

ART. 4. Nicaraguans are either native or naturalized.

ART. 5. Native Nicaraguans are:

1. Those born in Nicaragua of Nicaraguan parents or domiciled foreigners.
2. Children of Nicaraguan fathers or mothers born in foreign countries, if they choose the Nicaraguan nationality. This provision may be changed by international conventions, if the principle of reciprocity is observed.
3. Natives of the other Republics of Central America who reside in Nicaragua and do not declare before the competent authority their desire to the contrary.

ART. 6. Naturalized Nicaraguans are:

1. Spanish-American citizens who declare before the respective authority their desire to become naturalized in the country.
2. All other aliens who have resided two years in the country and make the same declaration.
3. Those who obtain naturalization papers according to law.
4. Naturalized citizens of the other Central American States who reside in the country and declare before the competent authority their desire to be Nicaraguans.

TITLE III.—*Foreigners.*

ART. 7. Foreigners shall enjoy in Nicaragua the same civil rights as Nicaraguans.

ART. 8. Nicaragua has not in favor of foreigners any other obligations, nor does she recognize any other responsibilities, than those established by the constitution and the laws in favor of Nicaraguans.

ART. 9. Foreigners are bound, from the day of their arrival in the

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* Text as printed in American Constitutions by Rodriguez (1905), I, 300.

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territory of the Republic, to respect its authorities and observe its laws.

ART. 10. They can acquire all kinds of property in the country, but they shall be subject to the same ordinary and extraordinary taxation as Nicaraguans.

ART. 11. Foreigners shall not resort to diplomatic interposition, except in cases of denial of justice. Those making undue claims shall lose the right to inhabit the country.

ART. 12. Extradition for political offenses is hereby forbidden, even in case that a common offense has been committed in consequence thereof.

ART. 13. The law shall establish the manner and the cases in which a foreigner can be refused admission into the territory of the nation, or be expelled therefrom.

TITLE IV.—*Citizens.*

ART. 14. Nicaraguan citizens are all Nicaraguans over eighteen years of age.

ART. 15. Citizens shall have the following rights: (1) The right to vote, (2) the right to hold public office, and (3) the right to carry arms, all of which is subject to law.

ART. 16. The rights of citizenship are suspended:

1. By an order of arrest or a declaration that the party concerned should be subject to criminal proceedings.

2. By a sentence imposing disability for the exercise of political rights during the term of the sentence.

3. By a sentence imposing penalties of graver character than the purely correctional ones.

4. By accepting employment in the service of foreign nations, excepting those of Spanish America, without permission of the legislative power, if the person accepting it resides in Nicaragua.

5. For mental incapacity.

ART. 17. The right to vote can not be waived and is compulsory for all citizens.

ART. 18. Suffrage shall be direct and secret.

NORWAY.

[Enclosures in despatch from Mr. Peirce, minister to Norway, October 5, 1906.]

MEMORANDUM ON NORWEGIAN CITIZENSHIP BY THE MINISTRY OF FOREIGN AFFAIRS OF NORWAY.

[Translation.]

Reply to enquiries contained in letter dated August 17, 1906, from the minister of the United States of America to the ministry of foreign affairs.

1. The provisions of the Norwegian statutes concerning the acquisition and the loss of Norwegian citizenship, etc., are to be found in the law on Norwegian citizenship, etc., of April 21, 1888, and the later additional laws of July 27, 1896 (No. 4), and March 29, 1900.

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The provisions contained in articles 9–16 of the first-mentioned law relative to the conditions on which others than Norwegian citizens may acquire real estate, etc., within the country, have subsequently been abrogated and the subject has been treated of in special laws, viz, those of June 9, 1903, April 7, 1906, and June 12, 1906.

2. The provisions concerning the loss of Norwegian citizenship are contained in article 6 of the law of April 21, 1888.

This article provides as follows:

Norwegian citizenship is lost—(*a*) By acquiring citizenship in a foreign State; (*b*) By permanently leaving the country. However, a Norwegian citizen having the rights of a native according to article 92, *a*, *b*, or *d*, of the constitution may retain his citizenship by declaring his desire to remain a Norwegian citizen before the local Norwegian consul within a year from the date of his emigration or from the date on which the present law goes into force.

This declaration is valid for a period of ten years and may, before the expiration of same period, be renewed so as to have effect for ten years longer. Any person who moves to another country in consequence of an appointment in the service of the Norwegian Government or in the public service of Norway, retains his Norwegian citizenship. In all cases where an emigrant retains this right, it is also retained for his wife as well as for his or her minor children who are at home with their parents or whose education is provided for by them.

3. According to the Norwegian law the consent of the Government is not necessary in order that a Norwegian citizen may acquire citizenship in a foreign country. However, if such citizenship is acquired, Norwegian citizenship is thereby lost as mentioned above in connection with article 6 *a*, of the law of April 21, 1888. Norwegian citizenship may, however, be recovered either by the person in question establishing a fixed domicile in Norway, provided he has the rights of a native Norwegian according to article 92 *a*, *b*, or *d*, of the constitution (Law of 1888, art. 2 *b*), *or* by grant (art. 3 of the law); see in this connection convention of May 26, 1869 (June 14, 1871), between Sweden and Norway on one side and the United States of America on the other for the regulation of the nationality of persons emigrating from Sweden and Norway to United States and vice versa.

4. The provisions relative to the effect which a sojourn abroad may have on Norwegian citizenship are to be found in article 6 *b*, of the law of 1888. See the reply to No. 2 above.

5. The provisions regarding the duty of diplomatic and consular officers to protect Norwegian subjects and their interests abroad are contained in article 6 of the law of June 12, 1906, on the diplomatic and consular service; in article 5 of the Instructions for Legations of August 25, 1906; in the consular instructions of July 24, 1906, chapter 6 *a*, "General provisions;" see also Commentary on the Consular Instructions.

6. There are no laws other than those mentioned above on the subject in question. However, a draft of a new law is in course of preparation, but as it has not yet been considered by the Storthing, it is impossible to say with certainty when and in what form it will be enacted.

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An exposé of the provisions of Norwegian legislation concerning citizenship is to be found in The Present Constitution of Norway, volume 1, second edition, by Aschehoug, and in the Constitutional Law of Norway, by Morgenstierne.

The subject has moreover been treated in a series of departmental letters published in the second part of the Law Bulletin, especially since 1888, under the heading of "Treaties, Foreign Relations, and Consular Service."

CONSTITUTION.

[Translation.]

ART. 51. The rules regarding the census and registration of voters shall be established by the law.

ART. 52. The right to vote is suspended for the following causes:

(*a*) Prosecution in court, at the instance of the public prosecutor, for criminal acts which may involve loss of the right to vote.

(*b*) Judicial interdiction.

(*c*) Bankruptcy, while the property of the bankrupt is in the hands of a receiver.

(*d*) Receiving or having received, during the year preceding the election, assistance from public charity.

ART. 53. The right to vote is lost for the following causes:

(*a*) Condemnation for criminal acts in accordance with the provisions of the law on the subject.

(*b*) Entering the service of a foreign power without the consent of the Government.

(*c*) Acquisition of the rights of citizenship in a foreign nation.

(*d*) Conviction for purchasing votes, selling one's own vote, or voting at more than one poll.

ART. 92. The only persons who may be appointed to Government offices are Norwegian citizens who speak the language of the conutry and who—

(*a*) Were either born in the Kingdom of parents who were at the time subjects of the nation;

(*b*) Or were born in foreign countries of Norwegian parents who were not subjects of another nation at the time;

(*c*) Or shall reside in future ten years in the Kingdom;

(*d*) Or shall be naturalized by the Storthing.

However, other persons than these may be appointed to the positions of professor in the university and in the higher schools, of physician, and of consul in a foreign country.

No person shall be appointed to the higher offices unless he is thirty years of age, or to the magistracy or the offices of judge or "foged" before the age of 25 years.

No person shall be a member of the council of ministers (cabinet) unless he professes the official religion of the nation. With regard to other Government offices, the necessary rules shall be laid down by law.

It shall be determined by the law to what extent women who fulfill the conditions imposed on men by the constitution may be appointed to Government offices.

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LAW OF APRIL 21, 1888, RELATING TO NORWEGIAN STATE CITIZENSHIP, ETC.

[Translation.]

SECTION 1. At birth every person born in wedlock[a] shall be entitled to the rights of a Norwegian State citizen if the father or mother are Norwegian State citizens, and, in the case of illegitimate children, if the mother be possessed of such rights. Foundlings discovered in this country are considered as born of Norwegian State citizens, provided before the completion of the eighteenth year of their age their parents have not been traced nor their nationality proved.

SEC. 2. The rights of a Norwegian State citizen are acquired by the following voluntary acts:

(*a*) By marriage, viz, of an alien woman with a Norwegian State citizen;

(*b*) When a person who, according to article 92, *a*, *b*, or *d*, of the constitution, having acquired the rights of a Norwegian-born State citizen, takes up a fixed domicile in Norway. This rule, however, shall not apply to Norwegian-born State citizens who assume a fixed domicile in Norway by virtue of an appointment in the service of a foreign State, or to women having the rights of Norwegian-born State citizens but married to the subject of a foreign State;

(*c*) By accepting an appointment as a Norwegian official (Embedsmand) or a permanent appointment from the King or any department of the Government, as a functionary in the service of the Norwegian State. In the case of officials or functionaries appointed to the joint public service of Sweden and Norway, this rule shall only apply to persons having the rights of Norwegian-born State citizens, and who renounce their allegiance to any foreign State.

SEC. 3. The rights of a Norwegian State citizen may also be conferred on other inhabitants of the country by permission of the King, or of the authority authorized by him to grant such permission.[b] As a rule such license shall only be granted to those who (*a*) have had a fixed domicile in this country during three consecutive years; (*b*) give security that they and their families will not become chargeable to the poor-law district before having, by domicile acquired the right to become chargeable to the parish in any district in this country, provided such rights do not already belong to them at the time when this law shall come into force; (*c*) are of age, and (*d*) are not temporarily or forever disqualified from the right of suffrage according to sections 52*a* and 53*a* of the constitution.

In order to obtain the rights of a Norwegian State citizen in virtue of these rules, an application should be made to the authorities at the place where the applicant resides, stating at which places he has resided in this country, and, if he is a subject of any foreign country, the name of such country, adding a declaration to the effect that, in case of the application being granted, he will renounce all allegiance to such foreign State. If the validity of the last-named declaration depends, according to the laws of the foreign State in question on the consent of its Government, the applicant must prove that such consent has been granted.

[a] According to the law of Norway, children born out of wedlock are legitimized as soon as the parents legally enter into matrimony.

[b] By decree of the Crown Prince Regent dated June 11, 1888, such authority has been granted to the department of justice.

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If the application is granted, a certificate as Norwegian State citizen will be issued to the applicant in such form as the King may prescribe. Such certificate shall only come into force after the person named therein has taken the oath prescribed in section 51 of the constitution. The judge by whom the oath has been administered shall endorse the certificate with an attestation of the administration of the oath.

The rights of a Norwegian State citizen may be acquired by any widow or spinster, according to the preceding rules, but without taking the oath prescribed.

SEC. 4. When the rights of a Norwegian State citizen have been acquired by a person in virtue of paragraphs 2 and 3, the same rights shall also belong to his wife, and those of his or her children, under age, who reside with their parents or who are educated and brought up at their cost.

SEC. 5. Any foreign person domiciled in the Kingdom who, without being entered on the register prescribed in section 51 of the constitution, shall claim to have acquired the rights of a Norwegian State citizen at the time when the present law comes into force, must, in order to secure such right, apply to the authorities, within one year after the said term, for a certificate as Norwegian State citizen.

In the case of a person not having attained majority when the law comes into force, the term of grace allowed for such application shall be extended from the time he attained majority.

If the authorities consider the application well founded, and if the applicant fulfills the conditions prescribed in sections 3 *a* and *b*, of this law, a certificate as a Norwegian State citizen will be granted to him, which is to serve as full proof of his right as such. If the application is refused, the applicant shall not thereby be deprived of any right accorded to him by the laws now in force.

SEC. 6. A Norwegian State citizen shall lose his rights as such, (*a*) when he becomes the subject of a foreign State, and (*b*) when he leaves the Kingdom forever. Any Norwegian State citizen, however, having the rights of a Norwegian-born State citizen in virtue of section 92 *a*, *b*, or *d*, of the constitution,[a] may retain his rights as a Norwegian State citizen by making a declaration of his intention to remain as such, before the local Norwegian consul, within one year after his departure, or after the day when the present law comes into force.

This declaration shall be valid for the space of ten years, within the expiry of which term it may be renewed for a similar period.

Any person who takes up his residence in a foreign country on account of his appointment as a Norwegian official, or in the joint public service of Norway and Sweden, shall retain his rights as a Norwegian State citizen.

In all cases in which such right is retained, it applies likewise to the wife and to his or her children, under age, who reside with their parents or are educated and provided for by them.

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[a] In virtue of section 92 of the constitution the rights of a Norwegian-born State citizen belong to those who (*a*) were born in this Kingdom of parents being at that time subjects of the State, or (*b*) were born in foreign countries of Norwegian parents not being at that time subjects of another State, or (*d*) who are naturalized by the Storthing.

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SEC. 7. Every person who in virtue of section 92 *a*, *b*, or *d* of the constitution has the right of a Norwegian-born State citizen is entitled to settle in the Kingdom, and shall retain the domiciliary rights conferred by the poor laws for the towns and for the rural districts of June 6, 1863, sections 16 and 17, respectively.

Norwegian State-citizens are entitled to reside in Norway, except when they may be delivered over to the Swedish authorities in compliance with the law of September 11, 1818. Section 1 of the law of June 17, 1886, containing amendments of, and additions to, the poor laws, is hereby repealed as regards Norwegian State-citizens, but section 2 of the same law shall remain in force as regards emigrated Norwegian State-citizens who are not possessed of the rights of Norwegian-born State-citizens.

Every Norwegian State-citizen is a Norwegian subject. Immigrating aliens shall, even after becoming Norwegian State-citizens, enjoy the immunity from military service conditionally accorded to them by the law concerning military service of May 12, 1866, section 12.

SEC. 8. Those inhabitants of the country not possessing the rights of Norwegian State-citizens are not Norwegian subjects. With regard to their legal status, the rules contained in the laws, with the exception of the present law and the constitution, relating to Norwegian subjects, natives, Norwegians, inhabitants of the Kingdom, and Norwegian citizens, shall continue in force, foreigners being, however, subject to expulsion from the Kingdom in the same cases as hitherto. The law of August 4, 1845, relating to the qualifications required for election to certain municipal or parochial functions, and of June 17, 1886, referred to in the preceding paragraph, shall remain applicable to such aliens.

SEC. 9. In future, real property, except by special permission of the King, or the authority authorized by him,[a] may only be legally acquired in the realm by Norwegian or Swedish State-citizens, corporations, institutions, or limited liability companies, when their boards have their seat in Norway or Sweden, and consist exclusively of Norwegian or Swedish State-citizens. The same rule shall apply to leases of landed property, and the rights of usufruct, use, or other rights conferred thereby with regard to such property.

The King may grant exemptions from enactments of this paragraph with respect to leases or other rights acquired, for a period not exceeding ten years.

The right of obtaining a license to work a mine remains free to all, according to the mining law of July 14, 1842, as well as to the allotment of ground to such claim, according to section 18 of the same law, and the laws of February 17, 1866, respecting the rights of the holders of claims, and the term of grace allowed for the commencement and continuation of mining operations. Those communities of dissenters recognized by the law of July 16, 1845, shall, notwithstanding the provisions of this paragraph, have the right to acquire and possess lands for establishing churches, schools, parsonages, and cemeteries.

SEC. 10. Every Swedish State-citizen acquiring in future any real property in Norway, or such rights as aforesaid as are equivalent

[a] By decree of the Crown Prince Regent dated June 11, 1888, such authority has been granted to the department of the interior.

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thereto, as mentioned in paragraph 9, must, if not residing in Norway, have a representative at the place where the property is situated, who, in his absence, holding his power of attorney, shall be authorized to appear for him before courts of law and the authorities in all matters relating to the property or to the stated rights which may have been obtained by him.

The same rule shall apply to corporations, institutions, or limited liability companies, the boards of which have their seat in Sweden, and acquire such property or rights as aforesaid.

The name and residence of such authorized representative shall be officially published (registered).

In case of noncompliance with the preceding rules, the judge of the inferior court in whose district the estate is situated may, at the instance of any person concerned, appoint such a representative to act as attorney, and such appointment shall be binding upon the owner or occupier.

The preceding rules of this paragraph shall also be applied when, in virtue of a permission granted according to section 9, an alien has acquired in the Kingdom real property, or the rights aforementioned.

SEC. 11. Contracts concluded contrary to section 9 can not be enforced unless the permission as is required by the said paragraph be subsequently granted.

SEC. 12. If any document is required to be officially published (registered) concerning any acquisition for which aliens, according to section 9, require a license, and such can not be produced, the registrar shall, provided he finds it questionable as to what extent the acquisition is at variance with the terms of the stated paragraph, make an annotation thereof, which shall be forwarded by him to the superior authorities.

SEC. 13. If an agreement not in conformity with section 9 is executed by the registration of the title deed, or if the purchaser or the lessee has entered into possession of the estate or the exercise of the rights conceded, the authorities shall fix a time for the adjustment of the matter, either by his obtaining the license required or by voluntary retrocession, or the sale of the property to a person entitled to hold such property. The limit of time allowed must not be less than six months nor exceed three years. The decision of the superior authorities shall be officially published (registered).

SEC. 14. On the expiry of the time fixed the property, or said rights, shall be sold by compulsory auction, by order of the superior authorities, without any previous negotiations of agreement or notification to the party. The sale shall have full legal effect against the owner or the occupier, the person to whom he looks for title (Hjemmelsmand), and their creditors, or in case of their becoming bankrupts, their estates, and the mortgagees concerned. The sale is effected at the expense of the owner or occupier, no part of the proceeds thereof being paid over to him before the vendor or other person entitled to payment has received payment of his claims for the transfer of the estate or the said rights. Should the proceeds of the sale not be sufficient for such purpose, the debtor shall be held personally responsible for the claims.

SEC. 15. The rules of sections 13 and 14 shall also be applied when a limited liability company, having its seat in Norway or Sweden,

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and possessing any real estate in Norway, or possessed of the said rights according to section 9, and subject to a license, removes its seat to any foreign country, or admits into its board any member other than one possessed of the rights of a Norwegian or Swedish State citizen.

SEC. 16. If real property, or the right of usufruct or use, is acquired by inheritance by any person not entitled to its possession, when, according to special circumstances, the permission referred to in section 9 can not be obtained, the rules of sections 13 and 14 shall take effect, in so far as they are applicable to the case.

If the property of aforementioned rights belong to a female who is a Norwegian or Swedish State citizen, or has obtained the permission referred to in section 9, the property, or the right of usufruct or use, shall, when she marries any person not holding any such rights of State citizenship, or who has not obtained such permission, be her separate property.

SEC. 17. The term "fixed domicile" in the present law shall be understood to mean any residence of such a nature showing it to be the intention of the party to remain permanently in the Kingdom.

SEC. 18. The present law, which shall immediately come into force, shall not have effect in such instances in which its terms would be at variance with those of existing treaties with foreign powers.

LAW OF JULY 27, 1896 (NO. 4), CONTAINING AN AMENDMENT OF THE LAW OF APRIL 21, 1888, CONCERNING NORWEGIAN CITIZENSHIP.

[Translation.]

We, Oscar, etc., etc., hereby make known that the resolution adopted on July 9 of this year by the ordinary Storthing now assembled has been submitted to us, being worded as follows:

The second point of section 3 of the law of April 21, 1888, shall henceforth read as follows:

Such privilege shall, however, as a rule, only be granted to persons who—

(*a*) Have had a fixed domicile in this country during three consecutive years;

(*b*) Give security that they and their families will not need public assistance as paupers before they have acquired the right of domicile within some Norwegian poorhouse district, provided they do not already possess such right of domicile at the time the present law goes into force;

(*c*) Have attained their majority;

(*d*) Are under none of those disabilities which, according to sections 52a and 53a of the constitution, involve the suspension or the forfeiture of the right of voting.

And we have accordingly sanctioned and confirmed, and do hereby sanction and confirm, etc.

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LAW OF MARCH 29, 1900, AMENDING THE LAW OF APRIL 21, 1888, RELATING TO NORWEGIAN STATE CITIZENSHIP, ETC.

[Translation.]

The regulations contained in the fourth and fifth clauses of section 3 of the law of April 21, 1888, relating to State citizenship, etc., shall hereafter read as follows:

A certificate of State citizenship, granted by authority, shall not come into force until the person to whom it has been issued has before the proper tribunal, taken the oath of allegiance to the constitution of Norway. The judge by whom the oath has been administered shall endorse the fact on the certificate and inform the registrar of the residence of the person concerned thereof.

The rights of a Norwegian State citizen may be acquired by any widow or spinster according to the preceding rules.

LETTER OF MARCH 19, 1900, FROM THE OFFICE OF JUSTICE TO THE HOME OFFICE CONCERNING THE CITIZENSHIP OF NORWEGIANS DOMICILED ABROAD.

[Translation.]

The office of justice states that the declaration mentioned in section 6 *b* of the law of April 21, 1888, concerning citizenship, etc., is only prescribed as a condition by which those persons who have left the Kingdom for good can retain their rights of citizenship, and that, consequently, Norwegians domiciled abroad, who have not, nor have had, such intention as mentioned, and who have not otherwise lost their rights of citizenship (see section *a* of the said paragraph), must still be recognized as being Norwegian citizens, regardless of their having made or renewed a former declaration as to the retention of their rights of citizenship.

Respecting the question as to whether persons who have been domiciled abroad for a series of years may be considered to have or not to have the intention of leaving Norway for good, it may be remarked that, according to the opinion repeatedly expressed by the office of justice, a positive and unmistakable declaration that the person concerned neither has had, nor has, any intention of leaving Norway for good, and that, consequently, he considers his residence abroad as merely a temporary absence, ought generally to be accepted as sufficient proof that the party had no intention of leaving the country permanently. But such a bare statement can not, of course, be sufficient when the reason which caused the party to emigrate, or the conditions under which the person concerned is living at the foreign place, or other existing information may cause doubt to be thrown on the correctness of the declaration. The fact, however, of the person concerned having once made such a declaration as is mentioned in section 6 *b* of the law concerning citizenship can not per se be deemed sufficient, as, presumably, there can be nothing to prevent such a declaration being also made by persons who have left the Kingdom without any intention of remaining permanently abroad;

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see circular from the office of justice, published in the Legal Gazette of August 30, 1888.

In respect to those who, it must be assumed, have left the Kingdom for good, Norwegian citizenship must be regarded as lost, unless they have, within the terms of grace fixed by section 6 *b* of the law, made or renewed the declaration mentioned in that paragraph, it being assumed that under no circumstances can any dispensation be granted from the terms of grace prescribed by the said paragraph. On the other hand, it is assumed that the fact of the person concerned having in due time made an application for a passport, or attestation to the effect that he is a Norwegian citizen, must be held as having the same weight as an express declaration.

PANAMA.

Mr. Magoon, minister to Panama, to Mr. Bacon, Acting Secretary of State, August 24, 1906.

No. 152.] AMERICAN LEGATION,
Panama, August 24, 1906.

SIR: I have the honor to acknowledge receipt of the Department's circular of July 9, last, * * * and to report upon the specific questions contained in this circular as follows:

1. The laws relating to citizenship in the Republic of Panama.

2. The means by which citizenship in the Republic is lost. No laws have been framed covering these two points beyond the provisions contained in title 2 of the national constitution, which says:

TITLE II.

ARTICLE 6. The following are Panamans:

1. All those who are born or who may be born in the territory of Panama, irrespective of the nationality of the parents.

The children of a Panaman father or mother, born within the territory of another country, provided that they take up their domicile in the Republic and express a desire to become citizens of the Republic.

3. Foreigners who, professing some science, art, or industry, or owning some real estate or capital in circulation, and who, having completed ten years of residence within the Territory of Panama, declare before the municipal authorities of the place in which the have been residing, their intention of becoming citizens of Panama.

Six years will suffice if they are married and have a family in Panama, and three years if they are married to a Panaman woman.

4. Colombians who, having participated in the achievement of the independence of the Republic of Panama, have declared their intention to become Panamans, or so declare before the municipal authorities of the district in which they reside.

ARTICLE 7. Panaman nationality is lost:

1. By taking out naturalization papers in another country and establishing domicile there.

2. By accepting employment or honours from another government without the permission of the President of the Republic of Panama.

3. Being born a Panaman, by refusing to indorse the movement for the independence of the nation.

4. For having pledged one's self to the service of a hostile nation.

Nationality can only be restored by act of the National Assembly.

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3. Whether or not the law of the country authorizes the renunciation of citizenship; and, if so, the conditions for the reacquisition of the citizenship thus renounced.

No. I of article 7 of the constitution recognizes the right to renounce Panaman citizenship by acquiring citizenship in another country. No provision exists for the reacquisition of citizenship thus lost aside from that of article 7 of the constitution, which says: "Nationality can only be restored by act of the National Assembly." The Panaman Government, however, recognizes the principle that a Panaman naturalized citizen of some other country shall be considered to be a Panaman if he returns to the Republic and there takes up his domicile.

4. Whether and how far residence in foreign parts may affect the citizenship of origin.

Residence in foreign parts, no matter how extended, does not affect the citizenship of origin unless another citizenship is voluntarily and expressly acquired.

5. The practice of the Government of the Republic of Panama in protecting its citizens permanently residing in other countries.

For the protection of its citizens permanently residing in other countries the Republic of Panama, to quote from the secretary of state for foreign affairs:

* * * appoints diplomatic and consular representatives, and employs all other means authorized by the law of nations.

6. No legislation has been made concerning naturalization and the acquisition of citizenship beyond the provisions contained in the above quoted title 2 of the national constitution of Panama, for the reason that all these matters are covered by the administrative code, which is now being drawn up by a committee to be presented to the next national assembly.

I have, etc., CHARLES E. MAGOON.

PARAGUAY.

CONSTITUTION (1870).

[Translation.[a]]

CHAPTER III.—*Citizenship.*

ART. 35. Paraguayan citizens are:

(1) All persons born in Paraguayan territory.

(2) The children of Paraguayan fathers or mothers when domiciled in Paraguay, and by the mere fact of their domiciliation.

(3) The children of Paraguayans born abroad if their father is then in actual service of the Republic. Persons so born shall be Paraguayan citizens even for such purposes as under the constitution and the laws require native citizenship.

(4) These citizens shall enjoy the same political and civil rights as the native ones, and may fulfill every position in the Government

[a] Text as printed in Bulletin of the Bureau of the American Republics, No. 54, p. 125.

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except the Presidency or Vice-Presidency of the Republic, or the positions of members of the cabinet, deputies, or senators.

(5) The aliens upon whom Congress, by special favor, has granted naturalization.

ART. 36. To obtain naturalization in Paraguay it shall be sufficient for the alien to have resided two consecutive years in the country and owned some real estate, had some capital invested in business, practiced some profession, or engaged in some industrial occupation or art. This period of two years may be shortened if the alien has married a Paraguayan or proves that he has rendered services to the Republic.

ART. 37. Congress shall have the power to declare whether those not born in Paraguayan territory are, or are not, bound to obtain naturalization under article 35; and if in the affirmative, the proper letters of naturalization shall be then issued by the President of the Republic.

ART. 38. All Paraguayan citizens not having any of the disqualifications set forth in the next following article shall have the right to vote at the completion of the eighteenth year of their age.

ART. 39. The right to vote shall be suspended:

(1) By physical or moral inability preventing free and deliberate action.

(2) By serving as a private, corporal, or sergeant in the regular army, the national guard mobilized, or the navy.

(3) By being subject to criminal proceedings for offenses whose punishment entails disgrace.

ART. 40. Citizenship shall be lost:

(1) By fraudulent bankruptcy.

(2) By accepting office, functions, distinctions, or pensions from a foreign Government without special permission of Congress.

ART. 41. All those who, under the provision of the preceding article, have lost their citizenship shall have the right to apply to Congress and request to be restored to it.

PERU.

[Enclosure in despatch from Mr. Dudley, minister to Peru, No. 1284, August 29, 1906.]

MEMORANDUM.

Respecting native born and naturalized citizens, Title V of the Peruvian Constitution contains the following:

ART. 33. Peruvians are such by birth or by naturalization.

ART. 34. Peruvians by birth are:

1. Those born within the territory of the Republic.

2. Children of a Peruvian father or Peruvian mother, born abroad, whose names have been inscribed in the civil register by desire of their parents, during minority, or by their own desire as soon as they have reached the age of majority or have been emancipated.

NOTE.—By civil register (registro civil) is meant the register wherein are entered the names of the citizens resident in each municipal district. Consistently with article 34, supra, the practice of the Government of Peru is to

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recognize the foreign citizenship of a child born to foreigners while in Peru, provided the child is registered by its parents in the appropriate consulate of the country of the parents, or the child causes itself to be so registered upon arriving of age.

ART. 35. Peruvians by naturalization are foreigners over the age of 21 years, residing in Peru, who follow some calling, industry, or profession, and who inscribe themselves in the civil register in the manner provided by law.

NOTE.—The procedure to be followed in registering is found in the election law of March 24, 1861, article 19 of which provides that individuals who, pursuant to articles 34 and 35 of the constitution, desire to be inscribed in the civil register shall present themselves before the municipality with documentary evidence of their right. That which a foreigner must prove, in conformity with the regulation of November 19 of the same year, is, first, that he enjoys the rights of an inhabitant of the neighborhood (derecho de vecindad); and, second, that he follows a profession or industry, or has some lawful occupation.

Copies of the above-mentioned law and regulation are omitted, as they relate almost exclusively to elections. There is no naturalization act.

With reference to the proof of residence (vecindad), articles 45 and 46 of the civil code provide that domicile is constituted by dwelling in a place with the intention of remaining there; and that this intention may be proven by express declaration of the one concerned before the civil authority or by the lapse of two years' voluntary residence, or by any other fact that shows the alleged residence to be the place wherein he has principally established himself.

A Peruvian woman married to a foreigner, or a foreign woman married to a Peruvian, acquires by her marriage the nationality of her husband. In case of widowhood, the former recovers and the latter preserves her Peruvian nationality, provided they reside in Peru. (Art. 41, Civil Code of Peru.)

[Enclosure in despatch No. 1284—Translation.]

THE PERUVIAN FOREIGN OFFICE TO MR. DUDLEY, AUGUST 16, 1906.

No. 25.]

PERUVIAN FOREIGN OFFICE,
Lima, August 16, 1906.

Mr. MINISTER:

* * * * * * *

Article 41 of the constitution * * * sets forth the causes which entail the loss of Peruvian citizenship.

Among the causes mentioned is the fact of having obtained, or of exercising, the citizenship of another state, which implies the possibility of the renunciation of Peruvian citizenship, although it is not expressly authorized.

As regards the conditions for the reacquisition of citizenship, this depends upon the legislative power, and with this end in view recourse has been had to it in some cases.

The residence in a foreign country in no way affects, according to the Peruvian laws, the citizenship of origin.

* * * * * * *

J. PRADO Y UGARTECHE.

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CONSTITUTION.

[Translation.]

TITLE V.—*Peruvians.*

ARTICLE 33. Peruvians are such by birth or by naturalization.

ARTICLE 34. The following are Peruvians by birth:

1. Persons who are born in the territory of the Republic.

2. The children of a Peruvian father or Peruvian mother, who are born abroad and whose names have been entered on the civil register at the request of their parents during their minority, or at their own request when they have attained their majority or have been emancipated.

3. The natives of Spanish America and Spaniards who were in Peru when independence was proclaimed and have continued their residence there since.

ARTICLE 35. The following are Peruvians by naturalization:

Foreigners over 21 years of age residing in Peru, who exercise some trade, industry, or profession, and who are inscribed in the civil register in the manner prescribed by law.

ARTICLE 36. Every Peruvian is obliged to serve the Republic with his person and his property in the manner and to the extent prescribed by the laws.

TITLE VI.—*Citizenship.*

ARTICLE 37. Citizens qualified to exercise their rights as such are all Peruvians who have attained the age of 21 years, or who are married, even though they have not attained this age.

ARTICLE 38. The right of suffrage may be exercised by all citizens who can read and write, or are foremen of workshops, or own any real estate, or pay any tax into the public treasury.

The exercise of this right shall be regulated by statute.

ARTICLE 39. Any citizen may hold any public office provided he possesses the qualifications required by law.

ARTICLE 40. The exercise of the rights of citizenship is suspended:

1. For incapacity according to the law.[a]

2. For being declared bankrupt.

3. For being prosecuted criminally, when imprisonment is ordered.

4. For being notoriously a vagrant, gambler, or drunkard, or for being divorced through one's own fault.

ARTICLE 41. The rights of citizenship are lost through the following causes:

1. A judicial sentence thus ordering.

2. Fraudulent bankruptcy, judicially so declared.

3. Acquisition or exercise of the rights of citizenship in another nation.

(4) Acceptance from a foreign government of any employment, title, or decoration without the permission of Congress.

[a] The following are incapacitated: (1) Lunatics; (2) idiots; (3) those declared to be prodigals, from all acts specified by the law. (Art. 16. civil code.)

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(5) Becoming a monk, the rights of citizenship being recoverable by secularization.

(6) Traffic in slaves, wherever carried on.

PERSIA.

[Enclosure in despatch from Mr. Pearson, minister to Persia, No. 145, November 17, 1906.—Translation.]

PERSIAN LAW OR ORDINANCE CONCERNING CITIZENSHIP.

SECTION I. Every person who is born within the territory of the Persian Government shall be considered a Persian subject, unless it be proved at the time of his berth that the parents or father was a foreigner, in which case the child shall be accounted an alien.

SEC. II. All children born in Persia of parents who are subjects of a foreign state shall have the right, when they are grown up and come of age, to apply to become subjects of Persia, and their petition shall be accepted.

SEC. III. Whosoever being a citizen of a foreign state applies to become a subject of Persia, he must show, first, that he is of full age; second, that he has lived five years in succession in some part of Persia; third, that he is not under condemnation for any crime committed in the country of his nativity, and that he is not a fugitive from the military service of the state. Having given proof of his fitness, his certificate of naturalization will be delivered to him, and he can then obtain all the rights and privileges of a citizen of Persia.

SEC. IV. Whenever a foreign subject shall apply to be admitted a citizen of Persia before he has dwelt the prescribed time before mentioned in the territory of the Government of Persia, the Government in considering his fitness may waive the question of time and accept him as a citizen.

SEC. V. Whoever, having been citizens of Persia, have on their own part or that of their parents changed their nationality, may, on their application, though they have not fulfilled the prescribed conditions, be immediately readmitted to citizenship.

SEC. VI. It is provided that a Persian who has married wives, subjects of foreign powers, such wives shall naturally be subject to the Persian nationality of the husband. If, however, on divorce or the death of the husband, the woman shall desire to return to her original nationality, she shall be at liberty to do so.

SEC. VII. In case of foreign women, under the control of their husbands, subjects of a foreign state, no application on their part, in connection with Persian citizenship, shall be entertained, and unless and except in conjunction with their husbands, and in compliance with the prescribed rules of citizenship, can they be naturalized as subjects of Persia.

SEC. VIII. In respect to a person a citizen of Persia, in some foreign country, desirous of becoming the subject of some other state, he must, first, prove that he is not under a charge of any crime in the Persian courts; second, that he is not under judgment, and that he is not a fugitive from justice; third, that he is not a deserter from the

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army; fourth, that he is not in debt, and that he had no intention of absconding to free himself from pecuniary obligations, otherwise his change of nationality will be absolutely void, and if he should return to Persian territory he will be responsible for all the duties and obligations of his Persian citizenship.

SEC. IX. The relinquishment of Persian citizenship, though a person may fulfill all the conditions demanded for the change, yet it will still depend upon the will and permission of the sovereign; and if anyone being a citizen of Persia shall, without this permission, in a foreign land change his nationality, he is forbidden to reenter Persian territory, and if he should have any landed or other interests in the country he is ordered to sell or otherwise dispose of them.

SEC. X. The change of citizenship on the part of the father does not, whether they are minors or of full age, include that of the children, unless and except the children who have attained their majority or minors when the have attained full age, shall separately, with the fulfillment of established rules, elect to change their nationality. However, children that are born after the father has become a subject of another state will naturally be of the new nationality of the father.

SEC. XI. Persian women who are during their married life subjects of a foreign state cease to be citizens of Persia, but after divorce or the death of the husband it is only on petition or request made to the Government with full particulars of the case that they can be readmitted as subjects to their original status. If, peradventure, they should propose to change their Persian nationality a second time they will have to fulfill all the terms and conditions of antecedent regulations.

SEC. XII. Persian women who shall, by marrying with foreigners, lose their Persian nationality will be prohibited from holding or having any interest in villages, townships, or other property in Persia and be excluded from the rights and privileges appertaining to citizenship, except in so far as they are permitted by treaties.

SEC. XIII. It is ordained that where, from various circumstances or things, certain persons might be known as Persian subjects yet claim foreign nationality the onus of proof of foreign citizenship, whether it be original or acquired, rests with such persons themselves, and until such demonstration, according to the terms of this law, is made the parties shall be considered to be Persian subjects.

SEC. XIV. Such persons as shall have immigrated from foreign countries to Persia, and who, during their residence in Persia, have concealed their nationality and have conducted themselves as if they were Persian subjects, and in all their dealings they have behaved like Persians and have possessed themselves of real estate in Persia, which is a special privilege accorded to citizens, will be considered as subjects of the Persian state, and any claim to foreign citizenship on their account will not be admitted.

SEC. XV. In case a special immigration treaty has been concluded with any foreign government, the provisions of such treaty will, it is evident, be strictly carried out.

Dated the 5th of Safar, A. H. 1312, corresponding to the 7th of August, 1894.

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PORTUGAL.

[Enclosure in despatch from Mr. Fletcher, chargé d'affaires, July 30, 1906.—Translation.]

CIVIL CODE.

TITLE II.—*How Portuguese citizenship may be acquired.*

ARTICLE 18. Portuguese citizens are:

1. Those who are born within the Kingdom of Portuguese parents, or, if illegitimate children, of a Portuguese mother.

2. Those who are born in the Kingdom of a foreign father, who is not in the service of his country, unless they declare for themselves after becoming of age or through their parents or guardians during minority that they do not wish to become Portuguese citizens.

3. The children of a Portuguese father, even though he may have been banished from the Kingdom, or the illegitimate children of a Portuguese mother, even though they were born abroad, who become domiciled in the Kingdom, or who declare after becoming of age, or through their parents or guardians during minority, that they wish to become Portuguese citizens.

4. Those who are born within the Kingdom of unknown parents or nationality.

5. Naturalized foreigners of whatsoever religion.

6. Foreign women married to Portuguese citizens.

SEC. 1. The declaration required in No. 2 shall be made before the municipal authorities of the place in which the applicant resides, and the declaration required in No. 3 before the proper Portuguese consular officer or before a proper foreign authority.

SEC. 2. When the minor has become of age, he can, by a new declaration made before the municipal authorities of the place which he chooses for his domicile, revoke the declaration which, according to the terms of section 2, his parent or guardian may have made for him during his minority.

ARTICLE 19. Foreigners may be naturalized who have attained their majority or who are considered of age according to the law of their country and the Portuguese law—

1. When they are able to earn a livelihood by their own efforts or have other means of subsistence;

2. When they have resided at least a year in Portuguese territory.

SECTION SINGLE. However, foreigners descended from Portuguese on either side who become domiciled in the Kingdom may become naturalized regardless of the provisions of section 2 (requiring a year's residence previous to naturalization).

ARTICLE 20. The Government may dispense with either the whole or a part of the time of residence required in the second section of the preceding article, in favor of a foreigner who marries a Portuguese woman, or who has done, or may be called upon to do, some important service to the nation.

ARTICLE 21. Naturalization papers become effective only when they have been recorded in the archives of the municipality where the foreigner has established his domicile.

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TITLE III.—*How Portuguese citizenship may be lost.*

ARTICLE 22. Portuguese citizenship is lost:

1. By naturalization in a foreign country; but citizenship may be regained by returning to the Kingdom with the intention of becoming domiciled therein and making declaration to this effect before the municipal authorities of the place where the person elects his domicile.

2. By accepting public office, favors, pensions, or decorations from any foreign government without the permission of the Portuguese Government; but by the special favor of the latter citizenship may be reacquired.

3. By banishment under sentence, as long as that sentence shall last.

4. A Portuguese woman loses her citizenship by marriage with a foreigner, unless by the law of his country she does not acquire his citizenship by marraige. But if the marriage be dissolved, she may recover her Portuguese citizenship by complying with the terms of the second clause of section 1 of this article.

SEC. 1. The naturalization abroad of a Portuguese man married to a Portuguese woman does not, as regards the woman, entail the loss of Portuguese citizenship unless she elect the citizenship of her husband.

SEC. 2. In like manner the naturalization abroad of a Portuguese, though married to a foreign woman, does not entail loss of Portuguese citizenship on the minor children born before the naturalization of the parent unless they elect on attaining their majority to follow their father's nationality.

ARTICLE 23. Persons who reacquire Portuguese citizenship according to the terms of the preceding article can only avail themselves thereof from the day of their repatriation.

[Enclosure in despatch from Mr. Fletcher, chargé d'affaires, August 7, 1906.]

PORTUGUESE CONSULAR REGULATIONS, APPROVED BY DECREE OF DECEMBER 24, 1903.

CHAPTER II.—*Consular protection.*

ARTICLE 26. Consular officers shall promote by all means at their disposal the consular matriculation of Portuguese subjects.

SEC. 1. At every consulate and vice-consulate shall be kept a special register for the matriculation of Portuguese. This register shall contain, in separate columns, the following particulars about each person: Surname and Christian names, place and date of birth, condition, occupation, last residence in the Kingdom, residence in the cousular district, date of arrival, evidence by which his nationality has been proven, date of matriculation, and any other observations.

SEC. 2. A certificate of the entry in the register shall be issued. It shall be considered as a title of nationality.

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SEC. 3. The documents exhibited for the admission to the matriculation must be deposited in the consular office, but they shall be restored to the party when leaving the consular district.

ARTICLE 27. The consular officer must acquire, by any of the following means, the proof of the nationality of the parties requiring to be matriculated:

1. By the passport or any other legal document proving the identity of the bearer;

2. By the testimony of trustworthy persons;

3. By the applicant's declaration made in the presence of two witnesses.

SEC. 1. In case of doubt, the consular officer may make use of any means of information at his disposal in order to ascertain that the applicant is really a Portuguese subject. He may, if he fits [finds it] convenient, enter the applicant provisionally in the register, but such matriculation shall only be considered effective after the necessary documents have been exhibited.

ARTICLE 28. No act whatever shall be issued by the consular office in favour of any Portuguese subject residing in the district unless he has been duly matriculated.

SEC. 1. Portuguese subjects who have not applied for their entry in the register within the first six months after having fixed their residence in the district shall pay, besides the fees established by the tariff, an overtax of 25 per cent on all consular acts relating to them. This overtax is to be charged during six months after the matriculation.

SEC. 2. A notice of this provision shall be posted in a conspicuous place at the consular office, and advertised from time to time in the newspapers in such districts where there is a great number of Portuguese subjects.

ARTICLE 29. Consular officers must grant help and protection to Portuguese subjects:

1. Interfering in favour of their lawful requests before the authorities of the district.

2. Protecting the interests of the absent or incapable by law and performing on their behalf all conservatory acts demanded by the circumstances of the case.

3. Affording protection to widows, orphans, and all Portuguese subjects wrecked, destitute, or imprisoned;

4. Acting as counsels for the defence of any Portuguese subject engaged in a lawsuit without having any lawyer to assist him.

ARTICLE 30. It is forbidden to consular officers to accept any power of attorney concerning matters in which they may be obliged to interfere in their official character; they may, nevertheless, point out to Portuguese subjects asking for their advice, the best lawyers or solicitors, without binding themselves, in any case, as responsible for the thorough execution of the mandate.

ARTICLE 31. It is also forbidden to consular officers to promote or patronize, without being authorized by the foreign office, any subscription in favour of institutes or associations established in the Portuguese dominions, or of persons residing in the same.

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ARTICLE 39. In countries where the local use or the treaties in force grant to the consular officer the exercise of civil, commercial, and criminal jurisdiction over their fellow-countrymen, consular protection may be granted to natives of the country who may to that effect be under the conditions demanded by the use or the conventions. Letters patent of protection shall be issued to such individuals, and annually renewed.

SEC. 1. At the end of every year the consul shall send to the foreign office a list of the letters patent of protection in force within his consular district, specifying the motives of their concession.

ARTICLE 40. Consuls may extend their protection to the subjects of any friendly or allied nation of Portugal who have no consular representative in the district.

ARTICLE 41. Consuls shall inform and send to the ministry of marine and colonies the requests of Portuguese subjects residing in their consular districts who wish to be transported to any ultramarine province at the expense of the State. Such requests must declare the name, filiation, age, place of birth, condition, and occupation of the applicants and of the persons of their families accompanying them. The consular information must refer specially to the conduct and professional aptitude of the applicants, as well as to the circumstance of their having or not a guaranteed situation in the province where they intend to go.

ARTICLE 42. Consular officers must attend with very peculiar zeal to the interests of Portuguese immigrants arriving in their districts, and to the entire execution of the contracts made with them.

SEC. 1. Such contracts, drawn in any place of the Portuguese dominions, ought, in order to be valid:

1. To be drawn by a public deed.

2. To have the visé of the civil governor of the district of the competent colonial officer;

3. To mention the establishment where or the person to whom the services are due;

4. To contain the declaration that such services can not be ceded to another party.

SEC. 2. The consular officer must specially make inquiries about the conditions of the quartering of immigrants at the various places of their transit, the manner in which they are conveyed to their destination, and their treatment at the place where they are bound to serve, in order that he may immediately present his claim to the local authorities, and take such steps as the case may require when any abuse has taken place.

ARTICLE 43. Consuls may grant passports (Form No. 13) to Portuguese subjects after having ascertained:

1. The identity of the applicant;

2. That the applicant is a Portuguese subject;

3. That the applicant, if being under age, has the license of his parents or guardian to go away, or, if she is a married woman, that she has the permission of her husband;

4. That he has fulfilled the prescriptions of law on the military service.

SEC. 1. To those who should be unable to prove in a satisfactory manner this last circumstance, passport can only be granted for going to Portugal or to its ultramarine provinces.

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SEC. 2. From the subjects duly matriculated in the consulate of the district where they reside the exhibition of the certificate of registry shall only be demanded.

SEC. 3. Consular officers are empowered to appreciate the cases in which they may dispense the applicants to prove any of the aforementioned circumstances.

SEC. 4. The consular officer may refuse the grant of passports to Portuguese subjects whenever he has sufficient reasons to do so; but he shall immediately report to the foreign office the fact and the reasons he had for refusal.

SEC. 5. Passports are personal and valid for one year, and this clause shall be expressly declared in them. Nevertheless all the members of a family may be included in the same passport, specifying the individuals who compose the family.

SEC. 6. Passports issued to Portuguese subjects by naturalization (Form No. 14) must contain the declaration that such individuals when returning to their country of origin, shall only be considered as Portuguese subjects, if, according to the laws of that country, their naturalization in Portugal implies the loss of their primitive nationality.

SEC. 7. Passports shall be entered in a special register kept for the purpose at the consulate.

SEC. 8. Consular officers shall put in their visé, when required (Form No. 15), to the passports issued by the local authorities to Portuguese subjects.

THE AZORES.

Mr. Nicholls, vice and deputy consul at St. Michael's, Azores, to the Assistant Secretary of State, August 29, 1906.

AMERICAN CONSULATE,
St. Michael's Azores, August 29, 1906.

SIR: * * * The laws in this consular district [relating to citizenship] are identical with those of the mother country. * * *

I am, etc.,

WM. W. NICHOLLS,
American vice and deputy consul.

ROUMANIA.

Mr. Riddle, minister to Roumania, to Mr. Root, Secretary of State.

No. 47.] DECEMBER 10, 1906.

SIR: I have the honor to reply herewith to the questions contained in the Department's circular instruction of July 9 last, relating to citizenship in Roumania.

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1. The following are the principal articles from the Roumanian civil code relating to citizenship:

Article 8: Children found on Roumanian soil without any known father and mother are Roumanian subjects.

Article 10: A child born of a Roumanian abroad is a Roumanian. A child born abroad of a Roumanian who has lost his Roumanian nationality may reacquire that nationality by fulfilling the formalities provided in article 18 (see below).

Article 12: A foreign woman who marries a Roumanian will be considered as a Roumanian.

The jus soli does not prevail in Roumania, and a child born in Roumania of foreign parents follows the nationality of its parents, and can become a Roumanian subject only by due process of naturalization. The status of the Jewish population of Roumania (except those who are subjects of some foreign state) is that of "foreigners domiciled in Roumania and not enjoying the protection of a foreign power." They enjoy none of the political rights of Roumanian subjects, unless they acquire citizenship by naturalization, but they are nevertheless obliged to render the military service required of Roumanians unless they can prove that they have performed this service in a foreign country.

2. The means by which citizenship is lost (Roumanian civil code):

Article 17: Roumanian nationality is lost:

(*a*) By naturalization obtained in a foreign country;

(*b*) By accepting, without the authorization of the Roumanian Government, a public office from a foreign government;

(*c*) By enjoying for any time whatsoever foreign protection.

Article 19, section 1: A Roumanian woman who marries a foreigner shall follow the nationality of her husband.

Article 20: A Roumanian who, without the authorization of the Government, enters the military service of a foreign country or who joins a foreign military body shall lose his Roumanian nationality.

3. Roumania does not hold to the doctrine of perpetual allegiance, and the law of that counrty does authorize the renunciation of citizenship. The conditions for the reacquisition of citizenship are prescribed by the civil code as follows:

Article 18: A Roumanian who has lost his Roumanian nationality may reacquire the same by returning to Roumania, with the authorization of the Government, and declaring that he desires to settle in the country, and that he renounces all foreign distinctions [titles, offices, etc.] which are contrary to the laws of Roumania.

Article 19, section 2: A Roumanian woman who has married a foreigner may, on becoming a widow, reacquire Roumanian nationality.

4. Residence in foreign parts does not affect the citizenship of origin.

5. Full protection is accorded Roumanian citizens permanently residing in foreign countries.

The law relating to naturalization is as follows:

Article 7 of the constitution of 1879:

The difference of religious creeds and cofessions does not form in Roumania an obstacle to obtaining and exercising civil and political rights.

I. The foreigner, without distinction of creed, and whether subject

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or not of a foreign power, may obtain naturalization on the following conditions:

(*a*) He shall adress to the Government a petition of naturalization wherein he shall set forth the capital he possesses, the profession or trade he exercises, and his wish to establish his domicile in Roumania.

(*b*) He shall sojourn, after this petition, ten years in the country and prove by his actions that he is useful to it.

II. May be dispensed from the period of waiting:

(*a*) Those who have introduced into the country industries, useful inventions, or remarkable talents, or have founded here large establishments of trade or industry.

(*b*) Those who, though born and brought up in Roumania, of parents established in the country, have none of them ever enjoyed foreign protection.

(*c*) Those who have served in the army during the war of independence and who may be naturalized in the aggregate, on the proposal of the Government, by a single bill and without any other formalities.

III. Naturalization shall not be granted except by a law and individually.

IV. A special law shall fix the manner in which foreigners may be allowed to establish their domicile on the territory of Roumania.

Article 8 of constitution of 1879:

Naturalization is granted by the legislative bodies. Only naturalization assimilates a foreigner to Roumanians for the exercise of qolitical rights.

I have, etc., J. W. RIDDLE.

RUSSIA.

[Enclosure in despatch from Mr. Meyer, ambassador to Russia, November 12, 1906.—Translation.]

Extract from the report of the first division of the ministry of justice to the second division of the ministry of foreign affairs, No. 43695.

Proceeding to take up separately each of the questions propounded in the aforementioned note of the United States ambassador, the first division deems it necessary to state in regard to the first question, viz, what are the laws relating to Russian citizenship, that, as a general rule, set forth in art. 82 of the fundamental law, Vol. I, part I, edition of 1906; art. 822, Vol. IX, of the statutes, edition 1899, and art. 170 of the penal code, the provisions of our laws are alike with regard to Russian subjects and foreigners residing in Russia. the latter having equal rights with Russian subjects and enjoying the general protection of the laws, as well as being subject to our penal laws. As regards the special rights connected with Russian citizenship, they may be defined as exemption from those restrictions which are placed on foreigners by the law in certain special cases. Such restrictions are the following:

(*a*) The exclusion from Russia of certain classes of foreigners, such as: Jesuits (art. 459, Statutes; art. 219, Passport Regulations, Vol. XIV, edition of 1903), certain persons, such as gypsies and

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others, vagrants in general, and Roumanian Jews (art. 219 Passport Regulations); and clergymen of the Armenian faith from Persia and Turkey, who come for the purpose of collecting alms (art. 229 Passport Regulations).

(*b*) The prohibition of the settlement of foreign Jews in Russia, except Central Asiatic Jews. (Art. 819, Statutes, and note 4 to the same article in the edition of 1902.)

(*c*) The prohibition of Koreans and other emigrants from the Chinese and Korean domains from settling in localities on the boundaries between Russia and China and Korea. (Art. 818, note 1, Statutes.)

(*d*) The prohibition of foreigners from becoming inscribed as part of the resident population of the Murman coast. (Art. 849. Statutes.)

(*e*) The right of the chief civil officer in the Caucasus and of the governor-general of Turkestan to expel foreign subjects from the districts under their administration (art. 27, point 1, regulations regarding the Caucasus, and art. 12, note 3, regulations regarding Turkestan, Vol. II of the Code of Laws, edition of 1892); the right of the administrative authorities to expel foreigners not provided with the proper passport (art. 234, Passport Regulations); the right of the minister of the interior, and in appropriate cases of the minister of war, the governors-general, and governors, to expel foreigners sojourning in Russia and forbid their return thereto; and the right of the minister of the interior to adopt measures concerning the settlement of foreigners in certain localities (opinion of the council of state, sanctioned by the Emperor on May 26, 1903; collection of laws, 1903, art. 964; art. 58, Penal Code); besides which, an expelled foreigner who voluntarily returns to Russia becomes amenable to the provisions of art. 314 of the penal code.

(*f*) Special conditions for the issue of passports to foreigners sojourning in Russia, and the period during which these passports are valid (arts. 129–145 and 217, passport regulations).

(*g*) The restriction of the rights of foreigners to acquire real estate in certain governments of the western zone of Russia, as well as in certain localities of the Caucasus region (supplement to art. 830, note 2, statutes); in the steppe districts (Regulations Regarding the Steppes, art. 136, Code of Laws, Vol. II, edition of 1892); and in the region of Turkestan (Regulations Regarding Turkestan, art. 262, Vol. II, edition of 1892, and note 3 to art. 262 of the same regulations, edition of 1895).

(*h*) The restriction of the rights of foreigners with regard to commerce and industry (art. 828, note I, statutes), to wit: The prohibition from establishing stock companies and commercial firms for navigation on the Caspian Sea (art. 2139, note 2, civil code, Code of Laws, Vol. X, part 1, edition of 1900; art. 58, regulations regarding commerce, Code of Laws, Vol. XI, part 2, edition 1903); from raising the Russian national flag on vessels (art. 122, commercial regulations); from engaging in coastwise navigation (art. 165, commercial regulations); from owning and operating powder factories (art. 265, regulations regarding industry, code of laws, Vol. XI, part 2, edition of 1893); from carrying on mining operations in the seacoast region of the island of Saghalien, in the Turkestan region, and in other

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localities (arts. 267 and 268, and note to art. 432, mining regulations, Code of Laws, Vol. VII, edition of 1893 and 1902, and art. 991, collection of laws, 1902); from operating naphtha lands in the Caucasus (art. 547, note 1, mining regulations, edition of 1902); special conditions for the granting of mining concessions in the Kingdom of Poland (supplement to art. 341, note, mining regulations); and special requirements imposed on foreigners upon joining trade organizations (art. 377, note 2, industrial regulations).

(*i*) The establishment of a shortened (2-year) period within which persons living abroad may claim an estate left by a deceased foreigner in Russia. (Arts. 1247 and 1248, civil code.)

(*j*) A special procedure in the guarding of estates left by Turkish subjects. (Art. 1248, civil code.)

(*k*) The obligation on the part of the subjects of certain nations to give a special bond, at the request of the defendant, upon instituting suits in court (art. 571, point 5, regulations for civil courts, Code of Laws, Vol. XVI, part 1, edition of 1892, and note 2 to art. 571, edition of 1902).

(*l*) The prohibition from accepting foreigners into the military or civil service (art. 824, statutes, and art. 6, regulations on government service), with a few exceptions (arts. 41–46, service regulations); law prohibiting them from holding the positions of ushers in courts of justice (art. 299, organic court regulations), of summoners in courts of justice (art. 3523, organic court regulations), of notaries (art. 5, notarial regulations), of stock exchange brokers (art. 695, commercial regulations), of pilots (art. 308, commercial regulations), of captains on the seagoing vessels of the merchant marine (arts. 175 and 182, maritime regulations); of sailors on Russian vessels to a number exceeding one-fourth of the whole crew (art. 197, maritime regulations); the withholding of the right from foreigners of being chosen as members of the council of state (art. 20, Regulations Governing the Council of State, Vol. I, part 2, edition of 1906), and of the Douma (art. 6, Regulations Governing Election to the Douma, Vol. I, part 2, edition of 1906); of being elected to the provincial council arts. 16 and 24, Regulations on Government and District Councils, Vol. II, edition of 1892), and to the town council (art. 24, municipal regulations, Vol. VII, edition of 1892), as members of the board of directors of the Nijni Novgorod fair (art. 8, supplement to art. 665, commercial regulations); as guardians in the Chernigofsk and Poltafsk governments (art. 258, civil code); the prohibition to employ them as advocates (art. 355, organic court regulations); and selection of them as assessors (art. 81, organic court regulations).

(*m*) The establishment of certain special conditions governing the receiving of pensions by foreigners and their families (arts. 29, 597, and 604, Regulations on Pensions, Vol. III, edition of 1896); the withholding of the right from foreigners to receive pensions granted to orders, in case of their leaving the country (art. 166, Regulations Regarding Orders, Vol. I, part 2, edition of 1892).

(*n*) The withholding of the right from foreigners to receive the Order of St. Vladimir. (Art. 397, Point V, Regulations on Orders.)

Proceeding, then, to the second question propounded in the note of the United States ambassador, the first division considers that among the laws relating to the loss of citizenship it is proper to class art.

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853, statutes, together with arts. 102 and 103 of the civil code, and the note to art. 10 and the supplement to art. 88, statutes, which have in view the loss of the rights of Russian citizenship by a Russian woman who marries a foreigner. To them may also be added, in accordance with the explanation of the civil cassation division of the governing senate (1898, No. 32), the case of the loss of the rights of Russian citizenship by a Russian subject upon being ordained a foreigner, in accordance with the law of March 12, 1891.[a]

Next comes the third question contained in the note of the United States ambassador, concerning the renunciation of citizenship, which may be divided into two parts, the first part relating to the acquisition by a Russian subject of some other citizenship. In this regard it may be observed that the law does not define the cases in which such change of citizenship is permitted,[b] but requires a special permission in each case. As a general rule the release from Russian citizenship can only be obtained by imperial consent, solicited by the minister of foreign affairs through the council of ministers (note 2 to art. 32, and art. 59, Organization of Council of Ministers, Vol. I, part 2, edition of 1892, and also imperial ukaze of April 24, 1906, Art. V), but under some circumstances the right to issue emigration certificates without requesting the imperial permission in each case is granted to the governor-generals, as follows: In Warsaw, with regard to the inhabitants of the Kingdom of Poland (imperial order of March 28, 1891), and in Kieff, Volynsk, and Podolsk, with regard to foreign settlers who have acquired Russian citizenship (point 13, Section II, supplement to note 2 to art. 680, Statutes). At all events the release from the status of a Russian subject in the case of persons of the male sex over 15 years of age may only be granted after they have completely fulfilled the obligations of the military service, or after being released from service in the permanent army by drawing lots (art. 3, Regulations regarding military liability, Code of Laws, Vol. IV, edition of 1897). The acquisition of citizenship in a foreign nation without the permission of the Government is considered as a crime, punishable according to the penal code, and entailing the forfeiture on the part of the guilty party of all property rights and perpetual banishment from the territory of the nation, and in case of voluntary return to Russia, deportation to the colonies (art. 325, Penal Code, Code of Laws, Vol. XV, part 1, edition of 1902). In this connection it may be observed that the fate of persons who have committed the criminal act indicated in art. 325 and art. 326 of the Penal Code[c] has always attracted the imperial attention, and appropriate provisions were contained in a most gracious manifest with a view to granting remission to the guilty parties. Thus, in particular, according to the imperial manifest of August 11, 1904 (Art. XXVI), Russian subjects sojourning abroad and amenable to punishment according to arts. 325

[a] Foreigners are also granted the right to adopt foundlings and persons without relatives, but such adopted persons retain the status of Russian subjects (art. 163, civil code).

[b] In art. 304, passport regulations, edition of 1890, which was not embodied in the edition of 1903, a foreigner who had acquired Russian citizenship prior to February 10, 1864, was allowed to return to his former citizenship upon the payment of his debts and arrearages.

[c] Art. 326 of the penal code fixes the penalty for persons who have left the country, and who fail to return upon being summoned by the Government.

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and 326 of the Penal Code are exempted from the punishment fixed by these articles, and are merely subjected to police surveillance for two years upon their return to Russia.

As regards the cases in which the rights of Russian citizenship may be restored to a person who formerly had such citizenship but afterwards renounced it, as mentioned in the second part of the third question contained in the note of the United States ambassador, such cases are provided for in art. 853 of the statutes, according to which a female Russian subject who has married a foreigner and afterwards becomes a widow or is divorced, may recover Russian citizenship by exhibiting a certificate of the cessation of her marital status. The same rule applies to Jewesses who are Russian subjects, on condition that they do not leave the country upon marrying a foreign Jew. (Art. 820, Statutes.)

To the fourth of the aforementioned questions it may be observed that sojourn abroad by a Russian subject does not, as a rule, involve the loss of citizenship, although it entails certain legal consequences in some cases. Thus, the period of permissible sojourn abroad by a Russian subject is fixed at five years (art. 207, Passport Regulations), and persons who remain abroad beyond this period without special and sufficient cause and special permission given by the minister of the interior (Collection of Laws, 1904, art. 801, point 48), except minors,[a] are considered as being absent with unknown whereabouts, and their property is placed under the management of a custodian (art. 327, Penal Code; art. 7, and note to art. 7, Statutes; note to art. 36, regulations on civil suits, Code of Laws, Vol. XVI, part 2, edition of 1902). A person who has absented himself from the country and does not return upon summons by the Government is subject to the deprivation of all property rights and perpetual banishment from the territory of the nation, and, unless he adduces evidence extenuating his guilt within a period fixed by the court, he is recognized as being absent with unknown whereabouts and his property is placed under the management of a custodian. (Art. 326, Penal Code, edition of 1902.)

To the fifth question, as to what protection is afforded the persons and property of Russian subjects sojourning abroad, it must be remarked that this subject is by its nature comprised among the obligations of Russian consuls, who may in this behalf make oral or written representations to the local authorities and even make formal demands of them. (Art. 47, Consular Regulations, Code of Laws, Vol. XI, part 2, edition of 1903.) The cases in which such protection should be afforded are enumerated in general in the consular regulations. Among the consular duties are the following: Intervention in lawsuits and examination of complaints (arts. 100, 103, 104, 105, Consular Regulations, and arts. 268 and 282, Commercial Code, Vol. XI, part 2, edition of 1903); performance of the duties of guardian or custodian for the widows and children of Russian subjects who have died abroad (art. 77, Consular Regulations); custody of inheritances and delivering them to the proper parties (arts. 73, 75, 76, Consular Regulations, and art. 1238, note 2, Civil Law, Vol. X, part 1,

[a] In the case of minors who are under the control of their parents the five-year period is reckoned from the date of their majority.

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edition of 1900); the taking into safe-keeping of documents, valuables, and money (art. 80, Consular Regulations); the authentication of documents executed within the consular jurisdiction (arts. 16, 17, 108, Consular Regulations); the keeping of registers (art. 81, Consular Regulations, and art. 930, Statutes; the issue of passports (art. 88, Consular Regulations); giving testimonials as to persons who have suffered mental derangement, and guardianship of the persons and property of insane persons (art. 82, Consular Regulations; art. 370, Civil Code); the furnishing of means for medical treatment and burial of Russian sailors, and their return to Russia (art. 70, Consular Regulations); examination of the condition of arriving and departing vessels and their crews (arts. 49–56, 59, 60, Consular Regulations; looking after the discharge of seamen and their return to Russia (arts. 292–297, Commercial Regulations); supplying the places of deceased captains of vessels or skippers (art. 74, Consular Regulations); looking after the cases in which Russian vessels are injured and lending assistance in case of shipwreck or injury sustained at sea (art. 490, Commercial Regulations; arts. 61–67, 83, Consular Regulations); supervision of the purchase and sale of vessels (arts. 57 and 58, Consular Regulations); supervision of bottomry and respondentia loans (art. 68, Consular Regulations); cooperation with Russian war vessels and their crews (arts. 20–46, Consular Regulations); the warning of captains of vessels or skippers against localities which are dangerous owing to the hygienic conditions of the people (art. 98, Consular Regulations).

Taking up, finally, the sixth question propounded in the note of the United States ambassador concerning the manner in which foreigners may acquire Russian citizenship, it may be stated that the laws regarding this subject are set forth in Chapter III, Book I, Section VI, of the Statutes (arts. 836–857); art. 438, Sec. I, point 10, and art. 499, General Organization of Governments, and in art. 103, point 1, Administration of the Governments of the Kingdom of Poland, while certain conditions for the granting of citizenship may be regulated by special conventions concluded with nations on the subject (art. 839, note, Statutes.) With regard to the granting of Russian citizenship the law distinguishes several categories of foreigners. Thus, citizenship is not granted to any foreign Jews except central Asiatic (art. 819, Statutes), to dervishes (art. 821, Statutes), nor to a married foreign woman separately from her husband (art. 840, statutes.) On the other hand, foreign women who have married Russian subjects are considered as such without making any application or taking the oath of allegiance, as are also the wives of foreigners who have acquired Russian citizenship (art. 855, Statutes). Then there is a category of foreigners to whom the law grants the right to acquire Russian citizenship if they so desire and to whom the oath is administered by consent of the local government administration or its immediate superior in service. To these foreigners belong: (*a*) The children of foreigners who are born and educated in Russia or who, though born abroad, have completed a course of studies in the Russian intermediate or higher educational institutions (art. 850, Statutes); (*b*) children of legal age of foreigners who have acquired Russian citizenship (art. 851, Statutes); (*c*) foreigners employed in the Government service, as well as clergymen of foreign denomina-

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tions who are invited to serve the Russian Government (art. 852, Statutes), and (*d*) the children of a female Russian subject who has been married to a Russian subject but has become a widow or been divorced (art. 854, Statutes). In other cases application for citizenship must be made to the minister of the interior (art. 842, Statutes), who either decides to grant the application or else rejects it, even though the applicant should have observed all the formalities prescribed by the law (art. 845, Statutes); he may also, in his discretion, shorten for certain foreigners the period of five years' residence in Russia which is obligatory on all persons desiring to become Russian subjects (art. 848, Statutes). The authority thus vested in the minister of the interior is granted to the governor-general of Turkestan with regard to the granting of citizenship to the subjects of central Asiatic khanates, and to the governor-general of the Amoor regions with regard to Chinese and Coreans (notes 1 and 2, art. 845, Statutes; art. 344, point 5, Organization of Siberia). Special conditions for admission to Russian citizenship are established with regard to foreign colonists (art. 856, Statutes), foreign laborers residing in Russia for the purpose of cultivating land leased from landowners (art. 856, Statutes), foreign Hebrews who come with the intention of establishing factories, except distilleries, and Hebrew master workmen hired by manufacturers for the performance of factory work (art. 819, note 2, Statutes), and children of Hebrew women who are Russian subjects and have married Austrian subjects, but have subsequently become widows or been divorced (art. 820, note, Statutes).

With regard to naturalized foreigners the law establishes certain obligations and restrictions by virtue of the fact of their being admitted to Russian citizenship. Thus, naturalized foreigners are not allowed to fill the position of teacher in parochial schools (art. 44, note, code of civil-service law); within the period of five years after acquiring citizenship they can not perform the duties of pilot (art. 308, commercial code); and in the Kiefsk, Volynsk, and Podolsk governments they can not, in general, hold the office of head or secretary of a volost (point 8, Sec. II, Supplement to art. 680, note 2, Statutes); they are also subject to certain restrictions in the acquisition of real estate in the Volynsk government (Supplement to art. 857, Statutes).

The rights of Russian citizenship are granted to foreigners in Finland on condition of actual settlement there and the payment of one thousand roubles for the benefit of the fund for Finnish poorhouses and workmens' establishments (point 5, Sec. B. Supplement to art. 14, note, Statutes).

On the other hand, certain foreigners are, upon the expiration of a certain period after their naturalization, granted exemption from the payment of certain taxes and the furnishing of supplies in kind, especially foreigners who have settled in the Crimea (rules governing the settlement of private lands in the Crimea by foreign emigrants, imperially sanctioned November 8, 1860, Supplement to the Code of Laws, No. 36298), and foreign laborers who have come to Russia in the employ of agriculturalists (Opinion of the Council of State, imperially sanctioned December 18, 1861, Supplement to the Code of Laws, No. 37760).

The civil rights of foreigners in the various governments of the Kingdom of Poland are subject to the restrictions indicated in arti-

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cles 11–15 of the Civil Code of the Kingdom of Poland. The rules regarding the acquisition of Russian citizenship by foreigners in the Kingdom of Poland and regarding the renunciation of citizenship by residents of this kingdom are the same as in other parts of the Empire (Imperial ukase of December 31, 1867, Supplement to arts. 9 and 17 of the Civil Code of the Kingdom of Poland, Dn. Zals., Vol. LXVII, page 438). Moreover, in art. 6 of the Imperial ukase of November 27 (December 9), 1851 (Dn. Zals., Vol. XLIV, p. 369), it is provided that a fee of one hundred roubles shall be collected on foreign passports issued to Russian subjects who emigrate to foreign countries with the permission of the Government, for each person named in the passport, exception being made in the case of colonists, manufacturers, and master workmen who have settled in the Kingdom of Poland.

SALVADOR.

[Enclosure in despatch from Mr. Merry, minister to Salvador, August 29, 1906.—Translation.]

CONSTITUTION.

TITLE II.—*Salvadoreans.*

ARTICLE 41. Salvadoreans are such either by birth or by naturalization.

ARTICLE 42. The following are Salvadoreans by birth:

1. Persons born in the territory of Salvador, except the children of unnaturalized foreigners.

2. The legitimate children of a foreign man and a Salvadorean woman, born in the territory of Salvador, unless, within the year following the date on which they reach their majority, they declare before the proper governor that they choose the nationality of the father; the legitimate children of a Salvadorean man and a foreign woman, and the illegitimate children of a Salvadorean woman and a foreign man, when they are born in Salvador.

3. The legitimate children of a Salvadorean man and the illegitimate children of a Salvadorean woman, born in a foreign country and not naturalized therein.

4. The descendents of children of foreigners, or of a foreigner and a Salvadorean woman, when they are born in Salvador.

ARTICLE 43. Salvadoreans by naturalization are those who have acquired this nationality in accordance with previous laws and those who may acquire it hereafter in accordance with the following rules:

1. Spanish-Americans who obtain naturalization papers from the proper departmental governor, who shall grant them on the mere proof of the good character of the applicant;

2. Foreigners who apply for and obtain naturalization from the same authority, by proving their good character and two years' residence in Salvador;

3. Those who obtain naturalization papers from the legislative body;

4. Those who have acquired naturalization in accordance with article 48 of this constitution.

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ARTICLE 44. Central Americans who declare before the proper governor their desire to be Salvadoreans are also considered as naturalized Salvadoreans.

TITLE IV.—*Foreigners.*

ARTICLE 45. Foreigners shall be strictly bound to respect the authorities and to observe the laws from the moment they arrive in the territory of the Republic, and they shall also acquire the right to be protected by said authorities and laws.

ARTICLE 46. Neither Salvadoreans nor foreigners shall be entitled, in any case, to claim any indemnification from the Government for injury caused to their persons or their property by factions, but they shall have the free right to bring their claims against the officials or private individuals who are guilty.

ARTICLE 47. Foreigners may acquire all kinds of property, but it shall not be exempt from the ordinary or special taxes which the laws may levy upon the property of Salvadoreans.

ARTICLE 48. A foreigner renounces his nationality and becomes naturalized in Salvador by accepting public employment with pay, except as a teacher or in the militia.

ARTICLE 49. No international agreement shall modify in any respect the provisions contained in this title.

ARTICLE 50. Foreigners shall be subject to a special alien law.

TITLE V.—*Citizenship.*

ARTICLE 51. All Salvadoreans who are eighteen years of age, and those who are married or have obtained some literary degree, although they have not reached this age, are citizens.

ARTICLE 52. The rights of citizenship are suspended for the following causes:

1. Imprisonment in a criminal case in which release on bail is not granted;
2. Notoriously immoral conduct;
3. Mental derangement;
4. Judicial interdiction;
5. Refusal without just cause to discharge an office of popular election. The suspension in this case shall last during the whole period that said office should have been discharged; and
6. A judicial sentence which thus decrees.

ARTICLE 53. The following lose the rights of citizenship:

1. Those condemned to a punishment which involves the loss of citizenship;
2. Those condemned for a heinous crime;
3. Those who become naturalized in a foreign country;
4. Those who, residing in the Republic, accept employment from another nation without permission from the legislature;
5. Those who sell their vote in elections;
6. Those who subscribe to acts or proclamations or employ other direct means promoting or favoring the reelection of the President of the Republic; and
7. Officials who, exercising public authority in a civil or military capacity, restrain the freedom of suffrage.

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[Enclosure in despatch from Mr. Merry, minister to Salvador, August 29, 1906.—Translation.]

LAW OF ALIENS.

The National Constituent Congress of the Republic of Salvador, considering:

That it is of the greatest importance, for the sake of preserving the good international relations of the Republic, promptly and duly to carry out the mandate of article 50 of the constitution, decrees the following alien law:

CHAPTER I.—*Salvadoreans and foreigners.*

ARTICLE 1. Salvadoreans, by birth or by naturalization, are those enumerated in articles 42, 43, and 44 of the constitution of the Republic.

ARTICLE 2. The following are foreigners:

1. Persons born outside of the national territory who are subjects of foreign governments and who have not been naturalized in Salvador.

2. The children of a foreign father or of a foreign mother and an unknown father, born in the territory of the nation, until they reach the age at which they attain their majority in conformity with the law of the nation of the father or of the mother, as the case may be. Unless, within a year following the attainment of their majority, they declare their intention to follow the nationality of their parents before the governor of the department where they reside, they shall be considered Salvadoreans.

3. Salvadorean women who contract marriage with a foreigner shall preserve their status as foreigners even during widowhood. If the marriage is dissolved, a Salvadorean woman by birth may recover her nationality provided she declares before the proper governor her intention to recover this nationality, besides establishing her residence in the Republic.

A Salvadorean woman who does not acquire the nationality of her husband by her marriage, according to the laws of the country of the latter, shall preserve her own.

A change of nationality of the husband subsequent to marriage involves a like change of nationality of the wife and the minor children who are subject to the paternal authority, provided they reside in the country where the husband or father is naturalized, saving the exception established in the preceding paragraph.

4. Salvadoreans who become naturalized in another country and transfer their residence thither.

5. Those who serve foreign governments officially in any political, administrative, judicial, or diplomatic position without the permission of the legislature as required by article 53, No. 4, of the constitution.

ARTICLE 3. For the purpose of determining the place of birth in the case of the preceding articles, it is hereby declared that national vessels are, without any distinction, a part of the national territory, and that those who are born on board of them shall be considered as having been born in the Republic.

ARTICLE 4. By virtue of the right of extraterritoriality which dip-

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lomatic officers enjoy, the children of ministers and employees of the legations of the Republic, shall likewise never be considered as being born outside of the country for the purposes of this law.

ARTICLE 5. The nationality of artificial persons or entities (corporations) is regulated by the law which authorizes their formation: consequently, all those which are organized in accordance with the laws of the Republic shall be Salvadorean; provided, however, that they have their legal domicile therein.

Foreign corporations enjoy in Salvador the rights which the laws of the country of their domicile concede to them, provided that these laws are not contrary to the laws of the nation.

CHAPTER II.—*Expatriation and naturalization.*

ARTICLE 6. The Salvadorean Republic recognizes the right of expatriation as being natural and inherent to every man and as being necessary for the enjoyment of individual liberty; consequently it not only permits its own inhabitants to exercise this right—they being permitted to leave its territory and settle in a foreign country—but also protects foreigners of all nationalities who come to settle within its jurisdiction. The Republic, therefore, receives the subjects or citizens of other nations and naturalizes them according to the provisions of the constitution and of the present law.

ARTICLE 7. Expatriation and consequent naturalization obtained in a foreign country do not exempt a criminal from the extradition, trial, and punishment to which he is subject according to treaties, international practice, and the laws of the country.

ARTICLE 8. Persons naturalized in Salvador, although they may be located in a foreign land, are entitled to the same protection from the Government of the Republic as Salvadoreans by birth, both in regard to their persons and their property. Nevertheless, if they return to the country of their origin, they shall remain subject to any liabilities which they may have incurred in accordance with the laws of that country before their naturalization.

ARTICLE 9. The Salvadorean Government shall protect by all the means which are authorized by international law Salvadorean citizens in foreign countries. The executive branch shall use these means as it may deem proper provided they do not constitute acts of hostility; however, if diplomatic intervention does not suffice, if such means should be inadequate, or if the offence to Salvadorean nationality is so grave as to demand more severe measures, the executive shall immediately notify the legislature for the purposes contemplated by the constitution.

ARTICLE 10. The naturalization of a foreigner loses its validity by residence in the country of origin during two years, unless such residence is rendered necessary in the discharge of an official commission of the Salvadorean Government or occurs with the permission of the latter.

ARTICLE 11. Every foreigner who fulfills the requirements established in article 43 of the constitution by making application in writing and embodying therein the renunciation and the promise mentioned in the following article of this law can be naturalized in the Republic.

ARTICLE 12. Every naturalization implies the renunciation of all

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subjection, obedience, and fidelity to any foreign government, and especially to that of which the naturalized person was a subject; of all protection beyond that of the laws and authorities of Salvador; and of every right which treaties or international law grant to foreigners. It also implies a promise of adhesion, obedience, and submission to the laws and authorities of the Republic.

ARTICLE 13. Naturalization papers shall not be granted to the subjects or citizens of a nation with which the Republic is at war.

ARTICLE 14. Neither shall they be granted to those who are reputed and judicially declared in other countries to be pirates, slave traders, incendiaries, or counterfeiters of bank notes or other paper used as money, nor to assassins, kidnappers, and robbers. Naturalization obtained fraudently by a foreigner in violation of the law is ipso jure null and void.

ARTICLE 15. Naturalization papers or certificates shall be issued gratuitously, it being unpermissible to collect any fee therefor, either for costs, registration, seal, or under any other pretext.

ARTICLE 16. Naturalization being an eminently personal matter, an applicant may be represented only with full and sufficient power of attorney, when naturalization is not effected by virtue of the law; however, in no case shall a power of attorney supply the defect of nonresidence on the part of the foreigner in the Republic.

ARTICLE 17. Neither nationality nor alienism can be transferred to third persons. Consequently a national can neither enjoy the rights of a foreigner, nor can a foreigner enjoy the prerogatives of a national by virtue of having the status of both.

ARTICLE 18. Change of nationality is not retroactive in its effect. The acquisition and recovery of the rights of a Salvadorean become effective only from the day following that on which the naturalization has been obtained.

ARTICLE 19. Colonists who come to the country at their own expense or at the expense of private companies or enterprises, as well as immigrants of every class, may be naturalized individually according to the provisions of the constitution. Colonists who have settled here hitherto are also subject to said provisions as far as would not impair the rights which they have acquired according to their contracts.

ARTICLE 20. A naturalized foreigner shall become a Salvadorean citizen as soon as he fulfiills the conditions imposed by article 51 of the constitution, being placed on an equal footing as far as his rights and obligations are concerned with Salvadoreans. However, he shall be disqualified from holding those offices or positions for which nationality by birth is required according to the constitution.

CHAPTER III.—*Registration and its results.*

ARTICLE 21. The registration of foreigners consists in the inscription of their names and nationalities in a book kept for that purpose in the ministry of foreign relations of the Republic.

ARTICLE 22. A foreigner who desires to register should apply to the ministry of foreign relations if he is in the capital of the Republic, but if he is elsewhere he should apply to the governor of the department, proving his nationality by means of one of the following documents:

1. A certificate of the diplomatic or consular officer accredited to

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the Republic, wherein it shall always be stated that the interested party is a native of the country in whose name the officer is serving.

2. The passport with which the applicant has entered the Republic, certified to in due form.

3. The naturalization papers, certified to likewise, and only when satisfactory evidence is furnished of their destruction or loss, or that said document is not necessary according to the law of the country where it would have been issued, shall there be admitted other proofs of equal weight that the interested party legally acquired the naturalization which he claims.

ARTICLE 23. The proof of the nationality and the name of the applicant having been transmitted to the ministry of foreign relations by the proper authority, the inscription shall be made there and a certificate thereof shall be given to the foreigner through the said authority upon the payment of 5 francs as sole registration fee to the public treasury.

ARTICLE 24. Registration constitutes only presumptive evidence that the foreigner possesses the nationality which is attributed to him therein. It consequently admits of proof to the contrary.

ARTICLE 25. Evidence of registration is furnished by the certificate of registration issued and signed by the minister of foreign relations, who is the only person authorized to do so.

ARTICLE 26. No authority or public official can recognize any person as belonging to a particular foreign nationality who does not present to him his certificate of registration.

ARTICLE 27. The holder of a certificate of registration shall not avail himself thereof in order to assert any right or claim which may be attributed to him in such certificate if the pretended right or claim is of a date prior to that of the registration.

ARTICLE 28. The various nationalities of foreigners, as proven by registration, confer special privileges and impose special obligations upon them. These privileges taken in a strict sense, are called by the laws of the Republic "the rights of aliens."

ARTICLE 29. The rights of aliens are: (1) That a foreigner may invoke existing treaties and conventions between Salvador and his own nation; (2) that he may seek the protection of his sovereign through diplomatic channels; (3) the benefit of reciprocity.

ARTICLE 30. The legal status of a registered foreigner, so created by the privileges referred to, may be altered by renunciation on the part of the interested party, as well as by the existence of a state of war between Salvador and the foreigner's country.

ARTICLE 31. The renunciation may be express or tacit. It is express when it is embodied in an agreement between the Government and the foreigner; tacit when the latter voluntarily executes an act whereby he submits to the laws of Salvador, which grant him some favor upon the condition or supposition of the renunciation.

CHAPTER IV.—*Rights and obligations of foreigners.*

ARTICLE 32. Foreigners are subject to the provisions of Title IV of the constitution and to the law of March 3, 1877, and they enjoy the guarantees granted in Title II of the constitution, except that the

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Executive has the authority to expel a pernicious foreigner. The procedure in this case shall be purely administrative.

ARTICLE 33. They likewise enjoy the civil rights which belong to Salvadoreans; however, the legislature may modify and restrict these rights on the principle of reciprocity, and in order that foreigners may be subject to the same incapacities in the Republic as the laws of their countries impose upon Salvadoreans who reside therein.

ARTICLE 34. Foreigners may establish their domicile in the Republic for all legal purposes without losing their nationality. The acquisition, change, or loss of domicile is governed by the laws of Salvador.

ARTICLE 35. When the individual guaranties have been suspended, according to the provisions of the law regarding a state of siege, foreigners shall, like Salvadoreans, be subject to the provisions of the law which decrees the suspension, save the stipulation of pre-existing treaties.

ARTICLE 36. Domiciled foreigners are obliged to pay personal, general, and local taxes, both ordinary and extraordinary, under the same conditions as Salvadoreans, unless they are excepted by international agreements. With regard to taxes upon real estate they are subject to the provisions of article 47 of the constitution.

ARTICLE 37. Transients are exempt from all purely personal taxes of any kind whatever, whether ordinary or extraordinary, but they are not exempt from the taxes levied on real estate nor from the ordinary taxes levied on their property, industry, profession, or commerce.

ARTICLE 38. Every foreigner is obliged to obey and respect the institutions, laws, and authorities of the Republic, as prescribed by article 45 of the constitution. He must also submit to the decisions and judgments of the courts, and shall be entitled to no other recourse than those granted by the laws to Salvadoreans.

ARTICLE 39. Only in case of a denial of justice or of a voluntary delay in its administration may foreigners appeal through diplomatic channels; but this shall only take place after they have exhausted all the ordinary modes of appeal established by the laws of the Republic to no avail.

ARTICLE 40. A denial of justice shall only be understood to have occurred when a judicial authority refuses to make a formal declaration upon the main issue or any one of the incidental issues of a suit which he is trying or which is submitted to his cognizance.

Consequently the mere fact of a judge pronouncing a decree or sentence, whatever be its purport, shall render the allegation of a denial of justice impossible, even though it may be said that the decision is unjust or given contrary to the express terms of the law.

ARTICLE 41. A delay in the administration of justice ceases to be voluntary whenever a judge assigns as the reason for it some point of law or some physical impediment which it is not in his power to remove.

ARTICLE 42. Foreigners do not enjoy the political rights which belong to Salvadorean citizens, consequently they can neither vote nor be voted for for any office of popular election nor be appointed to any other public position or trust which confers civil or political jurisdiction, nor unite for the purpose of discussing the political

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affairs of the nation, nor take any part therein, nor exercise the right of petition in such matters.

ARTICLE 43. A foreigner who voluntarily exercises the rights mentioned in the preceding article shall thereby become liable for his acts and shall bear the consequences, the same as any Salvadorean; nor shall he be considered as becoming naturalized thereby except in the case contemplated in article 48 of the constitution.

ARTICLE 44. Foreigners are exempt from military service. However, those who are domiciled may be called upon at all times to fill municipal offices which do not confer any authority, jurisdiction, or deliberate vote. They must also lend their services to the police whenever the security of property and the preservation of order are at stake in the same town in which they reside.

ARTICLE 45. Every foreigner is under obligation not to violate neutrality against the Republic or the government thereof in any case of foreign war.

ARTICLE 46. Foreigners shall not take part in the civil dissentions of the country, and those who violate this prohibition may be expelled by the administrative authorities by Executive order as pernicious foreigners, remaining, however, subject to the laws of the Republic with regard to any offenses which they may commit against the latter, without prejudice to the fact that their rights and obligations during the state of war are regulated by international law and by treaties.

ARTICLE 47. With respect to the crimes enumerated in article 20 of the Code of Preliminary Criminal Procedure, foreign principals, accomplices, or harborers of crimes are subject to the provisions of article 21 of the same code.

ARTICLE 48. Continuous crimes which, having been committed before in a foreign country, continue to be committed in the Republic, shall be punished according to the laws of the latter whether the criminals be natives or foreigners, provided they are seized within Salvadorean territory.

ARTICLE 49. Crimes committed outside of Salvador by foreigners againsnt foreigners shall not be prosecuted in the Republic; however, the Government may expel the criminals from the country as pernicious characters.

ARTICLE 50. Crimes committed in the territory of the Republic by foreigners against foreigners or natives shall be prosecuted and punished in conformity with the laws of Salvador.

ARTICLE 51. Crimes committed in the following places shall be considered as having been committed in the territory of the Republic:

1. On the high sea on board of national war or merchant vessels.
2. On board of a Salvadorean war ship in a foreign port or waters.
3. On board of a Salvadorean merchant vessel in a foreign port or waters when the crime has not been tried in the nation to which the port or waters belong.

ARTICLE 52. When a foreigner commits a crime against the external security of the Republic, or that of rebellion or sedition, the Government may expel him immediately from the country through the administrative authorities, or subject him to trial in accordance with the usual rules.

ARTICLE 53. In the crimes of rebellion or sedition, the fact of the guilty party being a foreigner shall always be considered as an aggravating circumstance in the application of the penalty.

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ARTICLE 54. This law does not grant to foreigners the rights which international law, treaties, or the laws in force in Salvador deny them.

ARTICLE 55. Notwithstanding the fact that Spanish-Americans are not considered as foreigners in Salvador, they shall be subject to present law until the formation of the great Latin-American confederation to which article 151 of the Constitution refers.

ARTICLE 56. Central Americans shall not be considered as foreigners for the purposes of the present law.

Given in the national palace, San Salvador, on the twenty-seventh day of September, one thousand eight hundred and eighty-six.

To the executive power.

D. JIMENEZ, *President.*

SERVIA.

[Enclosure in despatch from Mr. Schuyler, chargé d'affaires, November 6, 1906.—Translation.]

EXTRACT FROM THE NOTE OF THE SERVIAN MINISTRY FOR FOREIGN AFFAIRS, AUGUST 24, 1906.

(1) Servian citizenship when lost may be recovered by fulfilling the legal formalities prescribed for the granting of Servian citizenship to foreigners who apply therefor.

(2) Servian citizenship may be acquired by prescription when the foreigner who applies therefor has spent seven years either in the service of the government or in a trade or in agricultural or any other field work in the country, and has lived all this time honestly and according to the laws of the country, without having committed any crime. Without regard to the period of residence in the country, Servian citizenship may be acquired only by special permission of the King with the consent of the council of state.

(3) The legal provisions concerning the acquisition and loss of Servian citizenship are contained in paragraph 44 of the civil code and in the regulations of May 24, 1844.

The text of paragraph 44 of the civil code is as follows:

Servian inhabitants have full enjoyment of all the rights of citizens. They possess the right of citizenship either by birth or by later acquisition, so that all Servian inhabitants who enjoy these rights are either native-born or naturalized Servians. In the case of native-born Servians the rights of citizenship are transmitted from parents to children according to natural laws, while naturalization may be acquired when a foreigner has spent seven years either in the government service or in a trade or in agriculture or in any other similar work, and has lived all this time honestly and according to the laws of the country, without having committed any crime. Citizenship may be acquired without regard to the period of residence in the country only by special permission of the King with the consent of the council of state.

The regulations of May 24, 1844, read as follows:

(1) Foreigners who wish to acquire and enjoy the rights of citizenship in Servia, and thus become naturalized, must proceed in the following manner:

(2) The conditions for the naturalization of foreigners in Servia are set forth in paragraph 44 of the civil code. Here the conditions are prescribed for those who wish to renounce foreign citizenship and acquire Servian citizenship.

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(3) A foreigner who wishes to become naturalized through residence in Servia shall submit his application directly to the ministry of the interior, or, in case he should be already domiciled in Servia, to the prefect of the district. In such application he shall submit his claims, together with proof as to his moral behavior, his fortune, and his means of livelihood, whereupon he shall receive a certificate, duly authenticated by the ministry for foreign affairs, to the effect that he shall be granted Servian citizenship as soon as he proves that he has been permitted to relinquish his foreign citizenship.

(4) If such a foreigner receives from the ministry of the interior the certificate for which he has applied, he shall immediately take the necessary steps to obtain permission to renounce his foreign citizenship, the proof whereof he shall present to the ministry of the interior for a period not exceeding one year after the receipt of said certificate; otherwise he shall be obliged to renew his application.

(5) As soon as the ministry receives the above-mentioned proof of permission to relinquish the foreign citizenship, and has convinced itself of its authenticity, it shall immediately grant to the applicant the rights of Servian citizenship and deliver to him a certificate of the fact, after having administered to him the following oath:

"I (name and surname), who have been until now a . . . subject, do hereby, upon acquiring Servian citizenship, swear by the living God that I will be loyal and faithful to the reigning king the same as native-born Servians, and that I will conscientiously respect the constitution and the laws and regulations of the country, obey the authorities, pay direct and indirect taxes, and fulfill all the duties of a Servian subject. So may God help me in this and the other world."

(6) A foreigner having thus acquired Servian citizenship, together with the certificate from the ministry of the interior, shall be required to indicate at the same time the district and community in which he desires to reside (unless he already has a domicile in Servia), after which he shall be directed to the proper district prefect (for Belgrade to the city prefect), who shall receive him at once into the district and inscribe his name in the local list of inhabitants, unless there are special difficulties and obstacles, in which case he shall immediately inform the ministry of the interior and await its decision.

(7) If a Servian subject wishes to renounce his citizenship and be naturalized in a foreign country, his first duty shall be to obtain a certificate from the competent foreign authority attesting that he will without any doubt be granted the foreign citizenship as soon as he obtains the necessary permission from the Servian Government.

(8) He shall then apply for his release to the proper district prefect, presenting the said certificate and duly authenticated evidence that he has fulfilled all his duties and obligations toward the state and the community, as well as toward his family and the inhabitants of his community, or else has reached an agreement with them.

(9) The district prefect (in Belgrade the city prefect), having convinced himself of the the truth of the statements made in the application (for which purpose he may, if necessary, utilize circulars or newspapers), shall send the application, together with his report, to the ministry of the interior, from which he shall await further instructions. When such instructions arrive the prefect shall grant the release to the applicant. The written release must be authenticated by the ministry for foreign affairs. The applicant's name shall then be removed from the list of Servian subjects, but, although he ceases in this manner to be a Servian subject, he can not be liberated from any private obligations he may have contracted.

The following additions have been made later:

In the future the ministry of the interior shall never accept foreigners on his own authority who apply for Servian naturalization before the end of the period prescribed in paragraph 44 of the civil code, and who deserve such exception on account of services to the state, but it shall grant them naturalization on the basis of the regulations of May 2, 1844 $\frac{\text{B. No. 603}}{\text{S. No. 424}}$, always applying previously for the necessary authorization of the Parliament, according to paragraph 44 of the civil code, since the said regulations of May 2, 1844, concern only those foreigners who have lived five years in Servia and who have

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only then expressed their wish to become Servian subjects and to renounce their foreign citizenship.

Foreigners who have lived honestly and without interruption for seven years under Servian protection may be allowed to take their oath as Servian subjects even without having been released from their former citizenship.

Foreigners who immigrated to Servia before May 2, 1844, and who have constantly lived there since, are excused from taking this oath because they are naturalized by virtue of the common law which was then in force.

SIAM.

[Enclosure in despatch from Mr. King, minister to Siam, September 10, 1906.]

Mr. Masao, acting judicial adviser to His Siamese Majesty, to Mr. Westengard, acting general adviser to His Siamese Majesty, September 7, 1906.

MINISTRY OF JUSTICE, *7th September, 1906.*

* * * * * * *

I regret to have to say that in Siam we have so far neither a law of citizenship nor a naturalization law. There have, however, been several attempts at legislation on these subjects.

* * * * * * *

T. MASAO.

SPAIN.

Mr. Collier, minister to Spain, to Mr. Root, Secretary of State, September 17, 1906.

No. 170.] AMERICAN LEGATION,
San Sebastian, September 17, 1906.

SIR:

* * * * * * *

With particular reference to your question 2, I call your attention to the fact that not only is it affirmatively provided that Spanish citizenship is lost by a Spanish subject who acquires the status of citizenship in another country by naturalization, or who accepts employment or office or service under another government without permission of the Government of Spain (Constitution, Article I, paragraph 4; Webster, Law of Naturalization, p. 291; Civil Code, article 20; Webster, p. 297), but also that Spaniards who transfer their domicile to a foreign country, where, "without any circumstance other than that of their residence there, they may be considered as natives (of the country of domicile), shall, in order to preserve their Spanish nationality," be entered upon the special register of the diplomatic or consular agent of Spain. (Civil Code, article 26; Webster, p. 298.)

* * * * * * *

I have the honor, etc.,

WM. MILLER COLLIER.

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CONSTITUTION.

[Translation.[a]]

ARTICLE I. The following are Spaniards:

(1) Persons born in Spanish territory.

(2) Children of a Spanish father or mother, although born out of Spain.

(3) Foreigners who may have obtained letters of naturalization.

(4) Those who, without such letters, may have gained denization in any town of the Kingdom.

The quality of a Spaniard is lost by acquiring naturalization in a foreign country and by accepting employment from another government without permission of the King.

CIVIL CODE.[b]

TITLE I.—*Spaniards and foreigners.*

ARTICLE 17. The following are Spaniards:

1. Persons born in Spanish territory.

2. Children of a Spanish father or mother, although they may have been born out of Spain.

3. Foreigners who may have obtained letters of naturalization.

4. Those who, without them, may have gained a residence in any place in the monarchy.

18. Children, while they remain under the parental power (patria potestad), have the nationality of their parents.

In order that those born of foreign parents in Spanish territory may enjoy the benefits granted to them by No. 1 of art. 17 it shall be an indispensable requisite that the parents declare, in the manner and before the officials specified in art. 19, that they choose, in the name of their children, Spanish nationality, renouncing any other.

19. Children of a foreigner born in Spanish dominion should declare, within the year following their majority or emancipation, if they desire to enjoy the quality of Spaniards which art. 17 concedes to them.

Those who are in the Kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside in a foreign land, before one of the consular or diplomatic agents of the Spanish Government; and those who are in a country in which the Government has no agent shall address the Spanish minister of state.

20. The quality of a Spaniard is lost by acquiring naturalization in a foreign country, or by accepting employment from another government, or by entering the armed service of a foreign power without permission of the King.

21. A Spaniard who loses this quality by acquiring naturalization in a foreign country can recover it, upon returning to the King-

[a] Text as printed in 67 Brit. & For. State Papers, 118.

[b] Translation by Walton (1899).

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dom, by declaring before an official in charge of the civil registry of the domicil which he elects that such is his will, in order that the official may make the corresponding inscription therein, and by renouncing the protection of the flag of such country.

22. A married woman follows the condition and nationality of her husband.

A Spanish woman who marries a foreigner shall, upon dissolution of the marriage recover Spanish nationality by fulfilling the requisites expressed in the previous article.

23. Any Spaniard who loses this quality by accepting employment of any other government or by entering the armed service of a foreign power without the King's permission shall not recover Spanish nationality without previously obtaining the royal authorization.

24. Any person, born in a foreign country of a Spanish father or mother, who may have lost Spanish nationality on account of the parents having lost it, may also recover it by complying with the conditions prescribed by art. 19.

25. In order that foreigners who have obtained letters of naturalization or gained a residence in any place in the monarchy may enjoy Spanish nationality, they have to previously renounce their former nationality, swear to the constitution of the monarchy, and inscribe themselves as Spaniards in the civil registry.

26. Spaniards who change their domicile to a foreign country, where they may be considered as natives without other conditions than that of residence in it, in order to preserve their Spanish nationality, shall be required to manifest that such is their will before the Spanish diplomatic or consular agent, who shall inscribe them in the registry of Spanish residents, as well as their consorts, if they are married, and any children which they may have.

27. Foreigners enjoy in Spain the rights which the civil laws concede to Spaniards, with the exception of what is provided in art. 2 of the constitution of the state or in international treaties.

28. Corporations, institutions, and associations recognized by law and domiciled in Spain shall enjoy Spanish nationality, provided they possess the character of juridicial persons in accordance with the provisions of the present code.

Associations domiciled in a foreign land shall have in Spain the consideration and rights which treaties or special laws may determine.

Mr. Berliner, consul at Teneriffe, to Mr. Bacon, Assistant Secretary of State, August 13, 1906.

CONSULATE OF THE UNITED STATES,
Teneriffe, August 13, 1906.

SIR:

* * * * * * *

The Canary Islands being a province of Spain, all laws in regard to naturalization, renunciation, and reacquisition of citizenship are the same as in Spain.

* * * * * * * *

I am, etc.,

SOLOMON BERLINER, *Consul.*

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SWEDEN.

[Enclosures in despatch from Mr. Graves, minister to Sweden, August 25, 1906.]

MEMORANDUM BY THE MINISTER FOR FOREIGN AFFAIRS OF SWEDEN.

[Translation.]

1. See the law of October 1st, 1894, concerning the acquisition and loss of citizenship, two copies of which are hereto annexed, accompanied with a translation.

2. Swedish nationality is lost:

(*a*) By naturalization in another country.

(*b*) By the marriage of a Swedish woman to a person who is not a Swedish subject.

If the married couple have had children together before marriage, these children also lose their Swedish citizenship, provided they are still minors at the time of such marriage. If, however, the children have attained their majority at that time they retain their Swedish citizenship.

(*c*) If a Swedish man or an unmarried Swedish woman, after having attained the age of twenty-one years, or the widow of a Swedish citizen, after the dissolution of her marriage, has had his or her domicile outside the country during ten years uninterruptedly, such person shall have lost his or her Swedish nationality, unless the sojourn in the foreign country has been due to an official mission on behalf of the Kingdom, or unless the interested person reserves to himself or herself the right to retain his or her nationality by means of a written declaration made at a Swedish legation or consulate before the expiration of the aforesaid period, in conformity with the special rules prescribed by the King. To continue to have legal force, such a declaration must be renewed before the expiration of every period of ten years, and it can not be validly made except by the interested person or by his or her descendants of the first generation, or by the widow.

The loss of citizenship incurred by a Swedish citizen as a consequence of not observing the provisions above mentioned entails the same loss for his wife and for his legitimate minor children, unless they have remained in the Kingdom.

The King may, by agreement with a foreign state, restrict the application of these provisions or annul them, as far as that state is concerned.

3. He who, with a view to being naturalized in a foreign country, desires to be liberated from his obligations as a Swedish citizen, must make an application to the King to this effect. If the application is granted, the condition will be attached thereto that the applicant must, within a fixed period of time, have acquired naturalization in another country.

The conditions under which a person who has been liberated from his or her obligations as a Swedish citizen and who has become a citizen of a foreign country can recover Swedish nationality are the same as for any other foreigner. (See below under 6.)

4. See above under 2 (c).

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5. The royal ordinance of November 4, 1886, concerning the consular service, contains the following provisions in regard to the duties of consuls toward Swedish subjects residing in foreign countries:

ARTICLE 49, PARAGRAPH 3. Consuls must likewise protect the persons, the property, and the rights of other Swedish subjects, and also assist them, when in need, by their counsel and by their material intervention to such an extent as is compatible with their other duties.

ARTICLE 56. When a Swedish subject is legally prosecuted before a foreign tribunal in a place where a consul resides for a matter which involves his personal freedom, the consul should attend the hearing and the discussion either in person or through a trustworthy delegate, if the accused expresses a wish to that effect.

ARTICLE 97. When Swedish subjects other than seamen are in distress, consuls and vice-consuls shall only in urgent cases render them such assistance as is strictly necessary in order to meet their most pressing needs.

6. See the above-cited law of October 1, 1894, and the royal ordinance of February 27, 1858, concerning the procedure and the conditions for the naturalization of a foreign subject in Sweden. Two copies of the said ordinance are hereto annexed.

LAW ON THE ACQUISITION AND LOSS OF CITIZENSHIP, GIVEN AT THE PALACE OF STOCKHOLM, OCTOBER 1, 1894.

[Translation.]

We, Oscar, by the grace of God King of Sweden, Norway, the Goths and the Vandals, maketh herewith known: That we, with the advice and consent of the Diet, have been pleased to enact as follows:

SEC. 1. Swedish citizenship belongs by birth to any legitimate child whose father is a Swedish citizen.

SEC. 2. A man or unmarried woman of foreign nationality, born in Sweden, who has been domiciled here without interruption until attaining the age of twenty-two years, becomes a Swedish citizen, unless he or she, during the year previous, has made a declaration in writing before the governor of the province to the effect that he or she renounces the right to become a Swedish citizen, at the same time proving by satisfactory evidence that he or she enjoys civil rights in another country. Such renunciation of citizenship will, however, not be open to those who are born of foreigners who have availed themselves of this privilege.

When Swedish citizenship has been acquired by a foreigner in consequence of this paragraph, the citizenship also extends to his wife and legitimate children.

SEC. 3. A woman of foreign nationality marrying a Swedish citizen acquires by her marriage Swedish citizenship.

If the couple have children together before the marriage takes place, such children also become Swedish citizens, provided that they are still under age.

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SEC. 4. Swedish citizenship can, moreover, be acquired by naturalization in the manner and under the conditions prescribed by a special law.

Unless otherwise decided at the time, the naturalization of a foreigner gives Swedish citizenship to his wife and legitimate children under age.

SEC. 5. Swedish citizenship is forfeited by anyone who becomes a citizen of another country.

Should anyone, with a view of obtaining foreign naturalization, desire to be absolved from his obligations as a Swedish subject, an application to that effect should be made to the King. Should the request be granted, the condition will be inserted that the applicant must, within a certain specified time, obtain citizenship in another country.

SEC. 6. A Swedish woman marrying anyone who is not a Swedish citizen loses by her marriage her Swedish citizenship.

If the couple have children together before being married, such children likewise lose their Swedish citizenship, provided that they are still under age at the time when their parents marry. If, at that time, they have attained their majority they keep their Swedish citizenship.

SEC. 7. Also, if a man or unmarried woman of Swedish nationality, after attaining the age of twenty-one years, or a widow, after the dissolution of her marriage, has been domiciled abroad during ten years without interruption, he or she forfeits all rights of citizenship, unless the sojourn abroad is due to public business on behalf of the Kingdom, or unless, before the expiration of the aforesaid time, the person in question has given to the Swedish legation or consulate a declaration of his intention to remain a Swedish subject, which declaration must be made in writing, and in the forms prescribed by the King. Such declarations must, so as to continue in force, be renewed before the end of each tenth year, and can not be validly made except by such persons as have themselves emigrated from Sweden, their children in the first generation, and the widows of such persons.

The loss of citizenship by a Swede, under the provisions of this paragraph, also entails the loss of the same by his wife and legitimate children under age, unless they remain in this country.

It rests with the King to limit or annul the provisions of this paragraph by agreement with a foreign power, in so far as that special power may be concerned.

SEC. 8. Anyone forfeiting his or her right as a Swedish citizen in consequence of paragraph 7, and not becoming a citizen of any other country, regains those rights on again settling in Sweden, or if the King permits, the citizenship may be regained without so doing.

Should Swedish citizenship be regained, under the provisions of the preceding clause, by the husband, the citizenship is then acquired also by his wife and legitimate children under age, even if they continue to remain abroad.

SEC. 9. An illegitimate child whose mother is a Swedish citizen obtains Swedish citizenship by birth. As regards the question of citizenship, it also follows the mother in those cases where the legitimate child follows the father according to this law. Should the mother's position as regards nationality be altered by marriage to

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anyone else than the father of the child, no change is made in the nationality which previously belonged to the legitimate child.

SEC. 10. Any child found in the Kingdom, about whom no knowledge can be obtained as regards its nationality, will be considered to be a Swedish citizen until the contrary is proved.

TEMPORARY ENACTMENT.

This law becomes valid on the 1 of January, 1895, and the provisions in paragraph 2 shall also apply to foreigners born before that date, provided they have not then reached the age of twenty-one years.

All whom it may concern have strictly to observe this law. In witness whereof we have signed this with our own hand and caused our royal seal to be thereunto affixed. Given at the Palace of Stockholm on the first day of October, 1894.

[L. S.] OSCAR.
AUG. ÖSTERGREN.

REGULATIONS AND CONDITIONS FOR THE NATURALIZATION OF FOREIGNERS AS SWEDISH CITIZENS.

[Translation.]

[February 27, 1858.]

SEC. 1. A foreigner desiring to be naturalized as a Swedish citizen shall make application to that effect to the King.

SEC. 2. The rights of Swedish citizenship may be acquired by foreigners who—

(1) Have attained the age of 21 years;
(2) Have a good character;
(3) Have resided three years in the Kingdom; and
(4) Have some means of livelihood.

If a foreigner has been employed in the service of the Kingdom in conformity with the provisions of section 28 of the constitution, or if he has distinguished himself for extraordinary skill in science or art, agriculture, mining, or any other occupation, or if his naturalization as a Swedish citizen would otherwise be of benefit to the Kingdom, he may be granted the rights of citizenship even sooner after his settlement in the Kingdom than provided above.

SEC. 3. The application for Swiss citizenship shall be accompanied by proof as to the applicant's age, the country from which he comes, the time when he entered the Kingdom, and the place or places where he has since resided, as well as regarding his character and his religious belief.

The authority called upon by the King to pass on the application shall gather and make known all other information regarding the matter which may be found necessary.

SEC. 4. When the application for Swedish citizenship is granted it shall be imposed as a condition that the applicant shall, within a period fixed by the King, declare before the proper authority, if he

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has not already done so, that he has ceased to be a subject of a foreign power, and take an oath of allegiance as a Swedish citizen.

If the applicant is from a country whose laws do not grant release from the obligations of a subject, he shall be required, upon taking his oath of allegiance, to renounce the political privileges and rights which he enjoys in the foreign country.

SWITZERLAND.

Mr. Clay, minister to Switzerland, to Mr. Root, Secretary of State, July 24, 1906.

AMERICAN LEGATION,
Berne, Switzerland, July 24, 1906.

SIR: I have the honor to acknowledge the receipt of the Department's circular of July 9, 1906, entitled "Citizenship," and in reply thereto to answer as follows the various questions asked in the said circular:

1. Article 43 of the federal constitution of 1874 reads as follows: Every citizen of a Canton is a Swiss citizen. As such he may participate, in the place where he is domiciled, in all federal elections and popular votes, after having duly proven his qualification as a voter. No person can exercise political rights in more than one Canton. The Swiss settled as a citizen outside his native Canton enjoys, in the place where he is domiciled, all the rights of the citizens of the Canton, including all the rights of the communal citizen. Participation in municipal and corporate property and the right to vote upon purely municipal affairs are excepted from such rights, unless the Canton by legislation has otherwise provided. In cantonal and communal affairs he gains the right to vote after a residence of three months. Cantonal laws relating to the right of Swiss citizens to settle outside the Canton in which they were born and to vote on communal questions are submitted for the approval of the federal council. (A copy of the federal constitution of 1874 is herewith inclosed.)

2. A Swiss can never lose his citizenship except by renunciation, the method of which is explained in article 3 of this dispatch. In connection with this I beg to quote article 44 of the federal constitution: No Canton has a right to expel from its territory one of its own citizens, or deprive him of his rights of citizenship. Federal legislation shall fix the conditions upon which foreigners may be naturalized, as well as those upon which a Swiss may give up his citizenship in order to obtain naturalization in a foreign country.

3. The laws of Switerland authorize the renunciation of Swiss citizenship. Article 7 of the federal law regulating the conditions under which a Swiss may renounce his Swiss citizenship reads as follows:

(*a*) That he no longer possesses any domicile in Switzerland.

(*b*) That he enjoys in the country where he resides, under the laws of that country, the right to freely act (civil rights).

(*c*) That he has obtained citizenship of a foreign country for himself, wife, and children, according to the end paragraph of article 9, or that such citizenship is guaranteed him.

According to article 8 of the said law, the declaration of renunciation of Swiss nationality must be presented in writing, together with the necessary documents, to the cantonal government; the latter gives information thereof to the authorities of the community of origin, for its own benefit as well as all other interested parties, and fixes a delay of not more than four weeks for any opposition thereto. Article 9 further says that, if the conditions mentioned in article 7 have been fulfilled and there has been no opposition, or if the opposition has been removed, the authorities competent, according to the

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cantonal laws, declare the petitioner released from cantonal and communal citizenship.

The release, which includes the loss of Swiss citizenship as well, dates from the transmission to the petitioner of the sealed document of release.

The release extends to the wife and children when they are under the marital or paternal control of the person released if no specal exception has been made in regard to them.

As regards the reacquisition of Swiss citizenship the Federal law, according to article 10, prescribes as follows:

The Federal Council can, after having taken the advice of the Canton of origin, reaccept without charge in their former communal and cantonal citizenship the following persons if they have a domicile in Switzerland:

(*a*) The widow, the wife under legal separation, or the divorced wife of a Swiss citizen who has renounced his Swiss citizenship, as well as those of his children who are still minors at the time of his renunciation, if the request is made by the widow or the divorced wife, or the wife legally separated, within ten years from the divorce or the legal separation, and by the children within ten years from the time at which they became 20 years old;

(*b*) The widow, the wife legally separated, or the divorced wife, who have lost their Swiss citizenship through marriage, if they make their request within ten years from the divorce or legal separation;

(*c*) Persons whom special circumstances have obliged to renounce Swiss citizenship, if they make their request wthin ten years after their return to Switzerland. (This applies to professors, teachers, and officials in a foreign government's employ.)

In the case of letters *a*, *b*, and *c* above mentioned, the reacceptance of the mother or the parents of Swiss citizenship entails with it the naturalization of the children who, according to the laws of their country of origin, are still minors or have a guardian, if the mother exercises over them legal control or if the guardian has given its consent, and if no formal objection has been made in their case.

All other Swiss citizens not mentioned above who have renounced their Swiss citizenship, to reacquire the same must go through the same formalities as a foreigner. (A copy of the Federal law of June 25, 1903, on naturalization and renunciation of Swiss citizenship, together with the conditions and formalities to be observed, herewith enclosed.)

4. In consequence of article 44 of the federal constitution above referred to, a Swiss always remains a Swiss as long as he has not according to Swiss laws voluntarily renounced his communal, cantonal, and general Swiss citizenship, and therefore residence in foreign parts in no way affects his citizeship of origin.

5. Swiss citizens permanently residing in other countries always remain under the protection of the Swiss Government.

It must be remembered that all Swiss citizens from the ages of 20 to 45 are subject to military duty or taxation even though residing abroad. Whenever a Swiss returns to his country of origin he is immediately called upon to pay all his military taxes due during his residence abroad. This also applies to those naturalized in a foreign country who have failed to renounce their Swiss citizenship according to Swiss law.

Furthermore, in consequence of article 44 of the federal constitution even a native-born American, son of a Swiss who was a naturalized citizen of the United States at the time of his son's birth, is, if he comes to Switzerland, under the laws of this country regarded as a Swiss if his father has failed to renounce Swiss citizenship in the manner above prescribed, and therefore liable to military taxation.

I have, etc.,

BRUTUS J. CLAY,
American Minister.

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[Enclosure 1.—Translation.]

FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION.

* * * * * * *

ARTICLE 43. Every citizen of a Canton is a Swiss citizen.

He may, as such, take part, at the place of his domicile, in all elections and votings on federal matters, after having duly qualified as a voter.

No person may exercise political rights in more than one Canton.

A Swiss of permanent residence enjoys, at the place of his domicile, all the rights of citizens of the Canton, and, with the latter, all the rights of the bourgeois of the commune. Participation in the property of the bourgeoisies and of the corporations, and the right to vote in matters pertaining solely to the bourgeoisies are excepted from these rights, unless the legislation of the Canton decides otherwise.

In cantonal and communal matters he becomes a voter after three months' residence.

The cantonal laws on residence and on the electoral rights possessed in communal matters by citizens of permanent residence are subject to the sanction of the federal council.

ARTICLE 44. No Canton may expel one of its citizens from its territory or deprive him of the right of birth (origin) or citizenship.

Federal legislation shall determine the condtions under which foreigners may be naturalized, as well as those under which a Swiss may renounce his nationality in order to become naturalized in a foreign country.

[Enclosure 2a—Translation.]

FEDERAL LAW ON THE NATURALIZATION OF FOREIGNERS AND THE RENUNCIATION OF SWISS NATIONALITY.

(June 25, 1903.)

The Federal Assembly of the Swiss Confederation, in execution of article 44 of the federal constitution, and in view of the message of the Federal Council of March 20, 1901, decrees:

I.—*On naturalization.*

ARTICLE 1. A foreigner desirous of acquiring Swiss citizenship must request of the Federal Council the authorization to have himself accepted as a citizen of a Conton or commune.

When it is a question of granting to a foreigner naturalization by favor the cantonal government must also request the authorization from the Federal Council.

ART. 2. The authorization shall not be granted unless the foreigner has had his usual domicile in Switzerland during the two years immediately preceding his application.

The Federal Council also examines into the relations of the foreigner with his native country, as well as all other circumstances concerning himself and his family. It may refuse to grant the

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authorization if it is found from the investigation that the naturalization of the applicant would redound to the detriment of the Confederation.

ART. 3. Naturalization includes the wife and children of the foreigner naturalized, provided they are subject to his marital or paternal power according to the law of his native country and unless the Federal Council makes a formal exception in regard to them.

ART. 4. Every decision granting communal and cantonal citizenship to a foreigner is null and void unless preceded by the authorization of the Federal Council.

On the other hand, Swiss nationality is only acquired when the authorization of the Federal Council is followed by the communal and cantonal naturalization in conformity with the provisions of the cantonal laws.

The authorization of the Federal Council lapses if the person to whom it is granted does not acquire communal or cantonal citizenship within three years from the date on which it was granted.

ART. 5. The Cantons are entitled to enact legislation to the effect that children born within their territory of resident foreigners are by right citizens of the canton and therefore Swiss citizens without the necessity of authorization by the Federal Council in the following cases:

(*a*) When the mother is of Swiss origin;

(*b*) If at the time of birth of the child its parents have been domiciled in the Canton for at least five years uninterruptedly.

The Cantons should reserve the right of option.

ART. 6. Persons who, besides Swiss nationality, possess also that of a foreign state can not demand of such state, as long as they reside there, the rights and protection due them as Swiss citizens.

II.—*On the renunciation of Swiss nationality.*

ART. 7. A Swiss citizen may renounce his nationality. For this purpose he must—

(*a*) No longer have a domicile in Switzerland;

(*b*) Enjoy his civil capacity according to the laws of the country in which he resides.

(*c*) Have acquired or assured a foreign nationality for himself, his wife, and his children within the meaning of article 9, last paragraph.

ART. 8. The declaration of renunciation of Swiss nationality must be presented in writing, together with the corroborative documents, to the Cantonal government. The latter gives notice thereof to the native commune, for it as well as for all other parties concerned, and fixes a maximum period of four weeks for offering objections.

If the right of renouncing Swiss nationality is contested, the Federal court decides in accordance with the procedure established for controversies of public law by the Federal law on the Federal judicial organization of March 22, 1893.

ART. 9. If the conditions mentioned in article 7 are fulfilled and no opposition has been made, or if the opposition has been overcome, the authority competent according to the Cantonal law declares the

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applicant liberated from the bonds of Cantonal and communal citizenship.

The liberation, which involves the loss of Swiss nationality, dates from the delivery to the applicant of the document of liberation.

The liberation includes the wife and children when they are subject to the marital or paternal authority of the person liberated and provided no formal exception has been made in regard to them.

III.—*On the restoration to Swiss nationality.*

ART. 10. The Federal Council may, after having consulted the native Canton, declare the free restoration of the following persons to their old rights of citizenship if they are domiciled in Switzerland:

(*a*) The widow, the wife separated from bed and board, and the divorced wife who have lost their Swiss nationality by mariage, as well as those of his children who were still minors at the time of renunciation, provided a request to this effect is made by the widow, the divorced wife, or the wife separated from bed and board within a period of ten years dating from the dissolution of the marriage or from the separation from bed and board, and by the children within ten years from the time they attained the age of twenty years.

(*b*) The widow, the wife separated from bed and board, and the divorced wife who have lost their Swiss nationality by marriage, provided they make application within ten years from the dissolution of the marriage or from the separation from bed and board.

(*c*) Persons whom special circumstances have forced to renounce Swiss nationality, provided they make application within ten years after their return to Switzerland.

In the cases under *a*, *b*, and *c* above, the return of the mother or the parents to Swiss nationality involves the naturalization of the children who, according to the law of their native country, are still minors or are provided with a guardian, provided the mother exercises paternal authority over them or the guardian has given his consent, and provided no formal exception has been made with regard to them.

IV.—*Chancellery fees.*

ART. 11. The Federal chancellery shall receive a fee of 20 francs for issuing the authorization to acquire naturalization in a Swiss Canton or commune.

The following are excused from the payment of this fee:

(*a*) Persons reinstated in their Swiss citizenship.

(*b*) Foreigners who were born in Switzerland and have resided there at least ten years.

(*c*) Cantonal governments which request the authorization to grant to a foreigner naturalization by favor (art. 1, par. 2).

V.—*Annulment.*

ART. 12. The Federal Council may, within the period of five years from the cantonal naturalization, revoke the authorization granted to a foreigner to acquire communal and cantonal citizenship, provided it is proven that the conditions laid down by the law for the granting of this authorization have not been fulfilled.

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Such revocation also annuls the communal and cantonal citizenship granted on the basis of the federal authorization revoked.

The Federal Council may also, at any time, annul the naturalization granted by virtue of article 5, provided it was obtained in a fraudulent manner. The same right is reserved to the cantons.

VI.—*Final provisions.*

ART. 13. A period of two years is granted to the persons contemplated in article 10, letter b, in order to file their application for reinstatement, provided the period of ten years fixed in said article had already expired at the time the present law went into force.

ART. 14. The cantonal laws promulgated by virtue of article 5 shall, before going into effect, receive the approval of the Federal Council.

ART. 15. The federal law on naturalization of July 3, 1876, as well as all provisions of federal and cantonal laws which are contrary to the present law, are hereby abrogated.

ART. 16. The Federal Council is charged, in conformity with the provisions of the federal law of June 17, 1874, concerning popular votes on federal laws and decisions, with the publication of the present law and with fixing the time when it is to take effect.

Thus decreed by the National Council.

Bern, June 25, 1903.

Cd. ZSCHOKKE, *President.*
RINGIER, *Secretary.*

Thus decreed by the Council of the States.

Bern, June 25, 1903.

HOFFMANN, *President.*
SCHATZMANN, *Secretary.*

The Federal Council resolves:

The foregoing federal law, published July 1, 1903, shall be inserted in the Collection of Laws of the Swiss Confederation and shall take effect January 1, 1904.

Bern, October 2, 1903.

In the name of the Swiss Federal Council:

DEUCHER,
President of the Confederation.
SCHATZMANN,
First Vice-Chancellor.

[Enclosure 2 b—Translation.]

CONDITIONS AND FORMALITIES TO BE FULFILLED IN ORDER TO OBTAIN FROM THE FEDERAL COUNCIL THE AUTHORIZATION PROVIDED FOR BY THE LAW OF JUNE 25, 1903, ON THE NATURALIZATION OF FOREIGNERS AND THE RENUNCIATION OF SWISS NATIONALITY.

[Ordinance of the Federal Council of December 30, 1903.]

I.—*Naturalization.*

SEC. 1.—*Form of application.*—A foreigner desirous of becoming a naturalized Swiss should apply to the Federal Council for the

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authorization to have himself accepted as a citizen of a Canton or a commune (Federal law of June 25, 1903, article 1).

The application, made on a double sheet of *unstamped paper*, must—

(*a*) State the Christian and family names of the applicant, his occupation, the date and place of his birth, his nationality, the names of his parents, his domicile, his exact address, and the place and duration of his residence in Switzerland.

(*b*) State whether he is a bachelor, married, a widower, or divorced or separated from bed and board, and whether he has any children and how many.

If the applicant is married, the application should state the Christian and family names and the date and place of birth of the wife, as well as her place of origin.

If he has children, the application must state their Christian names, as well as the date and place of their birth.

Finally, the application shall state whether the wife and children live in the same household with the applicant.

SEC. 2.—*Documents with which the application should be accompanied.*—The application should be accompanied by a certificate of good conduct and the documents by which the several points indicated in article 1 may be verified, namely:

ment issued by a competent authority and proving the nationality of the applicant.

(*b*) The birth certificate of the applicant and, in case he is married, the birth certificate of his wife, his marriage certificate, the death certificate of his wife (if she be dead), and the birth certificates of his children, if he have any.

The documents enumerated under *b* may be replaced by a single document ("family certificate"), issued by a competent authority and containing all the data necessary, duly certified.

(*c*) If the applicant is divorced or separated from bed and board, a certified copy of the judgment granting the divorce or separation.

SEC. 3.—*Minors.*—Minors should present, in support of their application, a certified authorization of their guardian or the person exercising paternal authority over them. If this document is given by any person other than the father, it should be accompanied by a document (appointment, etc.) showing that the person signing the authorization is legally qualified to give it.

Emancipated minors must produce a certified copy of their letter of emancipation.

The age of majority is determined by the laws of the native country of the candidate for naturalization.

Majority is attained—

At the completed age of 16 years in Turkey (the Mohammedans);

At the completed age of 21 years in France, Germany, Great Britain, Italy, Russia, United States, Roumania, Portugal, Sweden, Belgium, Luxembourg, Greece, Brazil, Turkey (the non-Mohammedans), etc.;

At the completed age of 22 years in the Argentine Republic;

At the completed age of 23 years in the Netherlands;

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At the completed age of 24 years in Austria-Hungary, Norway, and Denmark;

At the completed age of 25 years in Spain, Bolivia, Chile, and the Republic of San Salvador.

SEC. 4. The applicant must prove that he has had his usual domicile in Switzerland for at least two years (article 2, par. 1 of the law). He shall exhibit for this purpose one or more certificates issued by the competent cantonal or communal authorities and showing that he has resided in Switzerland during the two years immediately preceding his application.

If the applicant has gone abroad during these last two years, the certificate of domicile shall state the reasons and the durations of his absences.

SEC. 5.—*Relations of the applicant with his native country.*—According to article 2, 2d paragraph, of the federal law of June 25, 1903, the Federal Council may refuse to grant the authorization necessary in order to acquire Swiss nationality if the relations of the applicant with his native country are such that his naturalization would prove a detriment to the Confederation.

The fact of the applicant's being still liable to active military service does not of itself prevent his being granted the authorization to become a natralized Swiss. The Federal Council, however, reserves the right to investigate each particular case and to grant or refuse the authorization according to circumstances.

In general, it may be observed that the citizens or subjects of Germany, Austria-Hungary, France, Italy, Russia, etc., who acquire Swiss citizenship before performing their military obligations in their native country, and without obtaining a certificate of release or a declaration from the competent authority entitling them to acquire foreign nationality, render themselves liable, in case they return to their former country, to be arrested, punished, and compelled to perform their military service.

The parties concerned shall have to bear these consequences themselves, as the Federal Council can not intercede in their behalf.

An Italian subject who acquires a foreign nationality forfeits, ipso jure, his Italian nationality; however, he is not thereby exempted from military service in Italy and does not escape the penalties imposed on those who bear arms against their country (articles 11 and 12 of the Italian civil code; see also the declaration following the convention on settlement and consular matters with Italy of July 28, 1868 (Official collection, Vol. IX, p. 636).

The wife and children of those who have lost their Italian nationality by foreign naturalization become foreigners unless they have maintained their residence in Italy. However, this loss of Italian citizenship does not exempt the children from military service in Italy, and they are liable, on returning thither, to arrest and enrollment in the Italian army. The federal authorities can not protect them against such a contingency.

The inhabitants of Alsace-Lorraine who acquire citizenship in another country can not settle again in Alsace-Lorraine, and, if they return there, they are liable to be expelled. The Federal Council could not intercede in their behalf.

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A Frenchman still subject to the obligations of military service in the active army or the reserve does not lose his French nationality by becoming naturalized in a foreign country unless he has been naturalized by authorization of the French Government.

A Frenchman who is a minor and becomes naturalized as a Swiss with the consent of his father or his guardian preserves his French nationality according to the French law, which does not admit that a minor can dispose of his nationality. It therefore follows that he can be compelled to perform military service in France, notwithstanding that he has become a Swiss according to the Swiss law.

On the contrary, the status of the minor children of Frenchmen who become naturalized as Swiss is regulated by the Franco-Swiss convention of July 23, 1879 (Official Collection, new series, Vol. V, page 163), article 1 of which reads thus:

"Persons whose parents, being of French origin, become naturalized as Swiss, and who are minors at the time of such naturalization, shall have the right to choose, during their twenty-second year, between Swiss and French nationality. They shall be considered French until they have decided in favor of Swiss nationality."

The declaration of choice in favor of Swiss nationality shall be made by the interested party before the Swiss or French municipal authority of his place of residence. If the interested party does not reside either on Swiss or French territory, he may make this declaration before the diplomatic or consular officers of either nation.

II.—*Restoration to Swiss nationality.*

SEC. 6. Persons applying for reinstatement in their former rights of citizenship by virtue of art. 10 of the law of June 25, 1903, must produce the documents mentioned in §§ 1, 2, and 3 hereinabove, together with a certificate from the competent authority of their place of residence, showing that their actual domicile is in Switzerland.[a] They must likewise furnish evidence of their own or their parents' citizenship in Switzerland before they became foreigners.

SEC. 7.—*Translation of documents drawn in foreign languages.*—Every document in any language other than German, French, or Italian must be accompanied by an official translation into one of these national languages.

SEC. 8 (article 11 of the law).—*Fees.*—A fee of twenty francs shall be charged for the issue of the authorization to acquire citizenship in a Swiss canton or commune.

The following are exempted from the payment of this fee:

(*a*) Persons being restored to Swiss citizenship;

(*b*) Foreigners who were born in Switzerland and have resided there at least ten years;

(*c*) Cantonal governments requesting authorization to grant to a foreigner citizenship by favor (art. 1, par. 2, of the law).

[a] These persons must simply prove that their actual domicile is in Switzerland. It is not necessary for this domicile to be situated in their native Canton or for it to be of two years' duration.

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TURKEY.

[Enclosures in despatch from Mr. Leishman, ambassador to Turkey, November 10, 1906.]

TRANSLATION OF THE OTTOMAN LAW OF NATIONALITY OF 1869.

ARTICLE I. Persons born at a time when their parents or only father are of Ottoman nationality are considered Ottoman subjects.

ARTICLE II. Any person born in the imperial dominions (Ottoman Empire) at a time when his (or her) parents are of foreign nationality can, by right, within three years, beginning with the date of his (or her) majority, claim Ottoman nationality.

ARTICLE III. A foreigner of age who has lived in the Ottoman Empire consecutively for five years can obtain Ottoman nationality by submitting personally, or through intermediary, a petition to the department of foreign affairs.

ARTICLE IV. The Imperial Ottoman Government extraordinarily receives into its allegiance foreigners as well whom it considers to be worthy of an exceptional favor, even should they not have fulfilled the conditions prescribed in the preceding article.

ARTICLE V. Persons who, being authorized, enter from Ottoman into a foreign nationality are, from the date when they changed their nationality, considered as foreign subjects and treated as such. But if he (or she) should enter into a foreign nationality without being authorized by the Imperial Ottoman Government his (or her) new nationality shall be considered as null and void, and he (or she) shall be considered as an Ottoman subject as before, and in every matter he (or she) shall be treated exactly as Ottoman subjects are treated. In any case, the abandonment by an Ottoman subject of his (or her) nationality depends on an instrument to be granted in virtue of an imperial irade.

ARTICLE VI. If the Ottoman Empire should so wish it can reject from its subjection the person who, without authorization from the Imperial Ottoman Government, changes his nationality in a foreign country, or enters into the military service of a foreign government. The return into the imperial dominions (the Ottoman Empire) of persons of this category whose nationality has been rejected is forbidden.

ARTICLE VII. The woman who, while an Ottoman subject, marries a foreigner, may return to her original nationality if, within three years following the date of her husband's death, she petitions for it. The provision of this article applies to the person; the matter of ownership of mulk and arazi property is subject to the general laws and regulations.

ARTICLE VIII. The children, even if they should be minors, of persons who have changed their Ottoman nationality or have been deprived of it, do not follow the nationality of their fathers, but remain Ottoman subjects. And the children of the foreigner who has entered into the Ottoman nationality, even if they should be minors, do not follow the nationality of their fathers, but are considered as foreigners.

ARTICLE IX. Every person inhabiting the Imperial Dominions is considered as an Ottoman subject and treated as an Ottoman subject. If he (or she) is a foreign subject it is necessary for him (or her) to prove it in a regular manner.

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[Memorandum and comments upon the translation of the Ottoman law of nationality of 1869, by Mr. Schmavonian, legal adviser of the American embassy at Constantinople.]

Although it is not within the scope of the present memorandum to study every aspect of the conceptions of nationality underlying the Moslem Sheri law, its influence can none the less be traced in the drafting of the present Ottoman law of nationality.

The extraterritorial privileges known under the general name of capitulations or treaty rights and enjoyed by the great majority of non-Ottoman residents of the Ottoman Empire are well known. At a time when the non-Moslem subjects of the Empire were not on an equal footing with their Mohammedan fellow-subjects, it was natural for the former to look with envy at the superior legal position enjoyed by foreign subjects in Turkey. In a country where theology and law as well as religion and nationality were often confused, a Christian Ottoman subject of the Sublime Porte would endeavor to find the means to enjoy the same rights and immunities as were enjoyed by the Christian subject of some western power; for in his own mind the question of "subjection" seemed identical with that of religion.

The stronger western powers "protected" not only their own subjects in Turkey, but those as well of other and smaller countries. Gradually the representatives of foreign countries protected in Turkey certain Ottoman subjects as well. This "protection," which culminated in "nationalization" or "naturalization," was not suddenly imposed on the Sublime Porte in its entirety. The capitulations were there, or else in course of formation, and the interpretations and extensions to which they gave rise were ready for application, backed and strengthened by precedent. In conformity with the capitulations of 1569 the interpreters of the French ambassadors were "protected" by being exempted from all "subsides et impôts." By the year 1740 this protection was practically extended not only to all employés of all the diplomatic missions, but even to those of the consulates. For certain diplomatic and consular officers this word "employés" was taken in so broad a sense that it included not only genuine employés and servants of every kind, but even friends who might be in need of "protection." In addition to real diplomatic and consular officers there was thus added a class of wealthy non-Moslem subjects of the Sultan to whom were granted the titles of Venetian, French, Dutch, or English consuls, and who were protected by their respective diplomatic missions, and in turn protected their own "employés" with their families. To these were again added certain merchants called "beratlis," as well as agents and brokers dealing with or for foreigners. So that in the eighteenth century there was a large and increasing number of native subjects of the Porte who, without obtaining foreign nationality, were yet partakers of the general extraterritorial privileges enjoyed by foreigners.

This was followed in the nineteenth century by wholesale naturalizations, granted by some representatives of certain powers not only to protégés, but even to non-Moslem subjects of the Porte who had never been outside the frontiers of the Empire.

This unfortunate state of affairs could only cause difficulties and complications for the Ottoman Government, and the Sublime Porte searched for a remedy in order to strike at the root of all these abuses. It therefore not only opened energetic and successful diplo-

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matic negotiations with certain of the embassies with a view to putting an end to the system of abusive protection and naturalization, but, by a wise policy, decided to place all Ottoman subjects, irrespective of religion, on an equal footing, knowing that in this way its non-Moslem subjects would not be so anxious to obtain foreign protection. When, by the treaty of Paris, of 1856, the powers admitted Turkey to participate in the advantages of European public law and in the concert of nations, they could not thereafter allow the continuation of the abuses of the former system of European protection and naturalization. In 1860 the Sublime Porte adopted certain repressive measures against Ottoman subjects who attempted to change their nationality while residing in Turkey. In 1863 a special convention was signed with Russia, and in the same year was published the "Regulation in regard to foreign consulates in Turkey," which limited foreign protection to Ottoman subjects in the actual service of consulates and certain missionary establishments or foreign monasteries. The number of such protégés who may be employed by consulates or in such ecclesiastical establishments is fixed by this regulation, which it was agreed would have no retroactive effect.

The ground was now prepared for the elaboration of a law of nationality—the one whereof the translation is inclosed. It was first promulgated on the 19th of January, 1869, and communicated to the foreign missions in Constantinople in February of the same year.

The missions were not at first disposed to accept the law, on the ground that their consent was not obtained before its promulgation. But the Sublime Porte pointed out that as the law would have no retroactive effect, any person who had already obtained a foreign nationality before its promulgation would be considered as a foreign subject, so that the law could affect none but Ottoman subjects, whose relations of allegiance with their own Government were established by it. In other words, the Sublime Porte considered, and the missions finally admitted, that this was a matter entirely of internal administration.

We thus see what the circumstances were which led to the drafting of the present law and why the Ottoman legislator is careful to lay down as a principle that in no case can an Ottoman subject change his nationality without previously obtaining permission from his Sovereign.

The law of 1869 can now be examined article by article:

Article I. "Persons born at a time when their parents, or only father, are of Ottoman nationality are considered Ottoman subjects."

This declares the principle that all persons, irrespective of their place of birth or of residence, follow the nationality of their fathers.

Article II. "Any person born in the Imperial Dominions (Ottoman Empire) at a time when his (or her) parents are of foreign nationality can, by right, within three years beginning with the date of his (or her) majority, claim Ottoman nationality."

The same principle is true not only in the case of Ottoman subjects born outside the Ottoman Empire, but also in that of persons born in Turkey of foreign parents. Only in case such persons should desire to become Ottoman subjects, the law grants them certain facilities which foreigners born outside of the Empire do not enjoy. The age of majority in this case is fixed by the laws of the country of which the applicant's father is a subject.

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Article III. "A foreigner of age who has lived in the Ottoman Empire consecutively for five years can obtain Ottoman nationality by submitting personally, or through intermediary, a petition to the department of foreign affairs."

The same remark about the age of majority holds true of this article. Certain rules are, however, observed in the case of foreigners who become naturalized Ottomans which are applicable as well to persons who come within the category of those mentioned in Articles II and III. Foreigners belonging to these classes who seek Ottoman naturalization must first produce a certificate from the consulates to which they belong stating that the applicant has not deserted from the military service of his country, and that no criminal prosecution has been instituted against him.

Article IV. "The Imperial Ottoman Government extraordinarily receives into its allegiance foreigners as well whom it considers to be worthy of an exceptional favor, even should they not have fulfilled the conditions prescribed in the preceding article."

Article IV covers persons who render special services to the Ottoman Empire, or to whom the Imperial Government wishes to render an exceptional favor. (*a*) It is here necessary to mention the case of non-Moslem foreign subjects who, within the dominions of the Empire, embrace the Moslem religion. (*b*) Immigrants who come to Turkey for permanent residence acquire Ottoman nationality with no other formality than that of taking an oath of allegiance. (*c*) A foreign woman, when she is married to an Ottoman subject, ipso facto becomes an Ottoman subject without any further formality.

Article V: "Persons who, being authorized, enter from Ottoman into a foreign nationality are, from the date when they change their nationality, considered as foreign subjects and treated as such. But if he (or she) should enter into a foreign nationality without being authorized by the Imperial Ottoman Government, his (or her) new nationality shall be considered as null and void, and he (or she) shall be considered as an Ottoman subject as before, and in every matter he (or she) shall be treated exactly as Ottoman subjects are treated. In any case, the abandonment by an Ottoman subject of his (or her) nationality depends on an instrument to be granted in virtue of an imperial iradé."

This article states very clearly the principle that an Ottoman subject can not, unless authorized by his Government, change his nationality, and that even in case he should without such authorization be naturalized in a foreign country, the Ottoman Government will not recognize him as a foreign subject. The fact of a prolonged residence in a foreign country does not alter the case, and children born during such residence are Ottoman subjects.

An Ottoman subject who, by special authorization, is allowed to relinquish his nationality is considered from the date of his naturalization as a foreign subject. Although the law does not expressly state so, it is generally admitted that should such Ottoman subject wish again to acquire Ottoman nationality, he can do so in the same way and under the same conditions as other foreign subjects. In this connection it would be interesting to note that a departure from these principles would have been made had the convention on naturalization between the United States of America and Turkey been ratified.

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In conformity with the provisions of that convention, an Ottoman subject who had been naturalized in America (without previous authorization from his Government) and returned to Turkey would, during two years, be regarded as an American citizen. If, however, he remained in Turkey for more than two years, he would then be regarded as an Ottoman subject and not an American citizen.

An Ottoman subject who wishes permission to change his nationality must be of age, and he must prove that he has serious commercial or other legitimate relations with the country of which he intends to acquire a citizenship, the Ottoman Government being the judge as to whether such relations are satisfactory. He must further prove that there is no criminal prosecution against him in the Ottoman Empire and that he owes no debts to the Imperial Government. Should the Sublime Porte be satisfied after such investigation, the matter is submitted to His Imperial Majesty the Sultan, who can either grant or refuse it. The formalities in connection with obtaining such permission are exceedingly long and not easily accomplished, and it is only rarely granted. This permission may exceptionally be granted after an Ottoman subject has been naturalized and permanently domiciled in a foreign country. Such authorization would be more in the nature of an official recognition of the foreign naturalization.

It may here be mentioned that a certain class of Ottoman subjects, especially those emigrating to America, are allowed to leave the country on condition that they abandon their Ottoman nationality. The formalities in these special cases are easier, and are of frequent occurrence. Such persons have to present petitions requesting permission to leave the Empire. They pledge themselves never to return to Turkey, and declare that they abandon their Ottoman nationality. These facts are inserted in the registers of the Census, and after several copies of their photographs have been deposited and it is clear that they owe nothing to the Government they are permitted to leave the country. It should be remarked that these people have no nationality from the date when they abandon their Ottoman allegiance to that when they obtain naturalization in the country of their adoption.

(Remark on Article V: The Turkish text of this begins in the plural, "persons who enter from Ottoman," etc., and continues in the singular, "but if he should enter into a foreign nationality," etc.)

Article VI: "If the Ottoman Empire should so wish it can reject from its subjection the person who, without authorization from the Imperial Ottoman Government, changes his nationality in a foreign country, or enters into the military service of a foreign Government. The return into the imperial dominions (the Ottoman Empire) of persons of this category whose nationality has been rejected is forbidden."

After laying down the principle that an Ottoman subject can not, without permission from his Sovereign, change his nationality, and that, even if he should do so, such change shall not be recognized by the Imperial Government, the legislator points out in Article VI the possible consequences of such change. When an Ottoman subject without permission is naturalized in a foreign country, the Ottoman Government may content itself with simply considering such natur-

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alization as null and void. In that case, if such a person returns to Turkey, he is allowed to remain as an Ottoman subject. As his foreign naturalization is null and void he is deprived of no rights whatever as an Ottoman subject. It may, however, if it should so wish, reject such a person from its subjection. Such rejection implies prohibition of such person returning or remaining in Turkey, and disqualifies him from the right to inherit and hold real property in Turkey. It would not be out of place to quote here Articles II and III of the law of Rabi-ul-Akhir, 1300 (1883), in regard to tenure of landed property by former Ottoman subjects: "Persons who, without obtaining official authorization from the Imperial Government, have changed their nationality, and whose (Ottoman) nationality has been canceled by the Imperial Government, are deprived of the right of owning landed property in Turkey and of obtaining it by inheritance." "The mulk properties of persons who may, according to the foregoing article, be deprived of the right of ownership and inheritance, are divided among their heirs who are Ottoman subjects like personal property. But according to the provisions of articles 110 and 111 of the land code, such persons have no longer the right of tapu (possession) in miri or mevcoufé lands; miri or mecoufé lands which they may have possessed before they changed their nationality, without going to their heirs, become escheated. Exactly the same course is followed in the case of idjaré téïnli vacf property."

Articles CX and CXI of the land code: "The land of an Ottoman subject does not pass by inheritance to his heirs who are foreign subjects; and a foreign subject can not have the right to tapu (possession) in the land of an Ottoman subject." "The land of the person who, without obtaining official authorization, abandons his Ottoman nationality, does not pass by inheritance to his children, grandchildren, father, mother, brothers, sisters, husband, or wife, who are Ottoman or foreign subjects. It becomes forthwith escheated; and without seeking for persons entitled to the right to tapu, it is put up at auction and given to the intended purchaser (highest bidder). In case, however, such person has changed his nationality by obtaining official permission, his land is not escheated, but remains vested in him. This, however, on condition that the Government whose nationality he has acquired should have signed the protocol attached to the law allowing the acquisition of landed property by foreign subjects."

The right to cancel the Ottoman nationality of one of its subjects is vested solely in the Imperial Government, and is exercised only in rare and extreme cases.

Article VII. "The woman who, while an Ottoman subject, marries a foreigner, may return to her original nationality if, within three years following the date of her husband's death, she petitions for it. The provision of this article applies to the person; the matter of ownership of mulk and arazi property is subject to the general laws and regulations."

This article does not clearly state that an Ottoman woman who marries a foreign subject follows the nationality of her husband, but that result is implied and made clear by subsequent ministerial circulars and a decision of the council of state, as well as by the general practice followed in the matter; and it can now be stated that such

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a woman marrying a foreign subject ipso facto becomes a foreign subject and does not need to apply for or obtain authorization from the Imperial Government. The somewhat obscure wording of the article is explained by the fact: (A) That according to the Sheri law, the marriage of a non-Moslem woman who is a subject of the Moslem state, with a foreign subject, has no effect on her nationality and she still remains a subject of the Moslem state. The Ottoman legislator, while admitting and inserting in the law of 1869 a principle sanctioned by almost all civilized countries, did not wish to state clearly this principle which might seem to be in flagrant contradiction with the provisions of the sacred Sheri law. The difference in the two systems of law may imply very serious consequences in the matter of inheritance. (B) The second explanation for this somewhat obscure wording is that the Ottoman subject woman may marry a foreigner whose laws do not grant her his nationality. In that case, if the Ottoman law had very clearly stated that by the fact of her marriage with a foreign subject she loses her Ottoman nationality, while on the other hand it so happened that his law did not grant her his nationality, then she would be left without a nationality. The article therefore has been worded in this way in order to meet all exigencies.

An exception is made in the case of Turkish women marrying Persians in Turkey. Such mixed marriages are forbidden in virtue of an Imperial Firman of the year 1237, as well as by a regulation and Grand Vizerial order of 1291 (the present Hejira year is 1324). If, however, Turkish women should, contrary to this prohibition, marry Persians, they, as well as any children born of such marriages, are none the less considered to be Ottoman subjects.

Article VIII: "The children, even if they should be minors, of persons who have changed their Ottoman nationality, or have been deprived of it, do not follow the nationality of their fathers, but remain Ottoman subjects. And the children of the foreigner who has entered into the Ottoman nationality, even if they should be minors, do not follow the nationality of their father, but are considered as foreigners."

This article is based on the principle that children born before the change of nationality of their fathers do not follow the newly-acquired condition of their father. This is true both in the case of the children of Ottomans who have become foreign subjects and of the children of foreigners who have become Ottoman subjects. However, children born after the change of nationality of their father follow his citizenship.

Article IX. "Every person inhabiting the Imperial dominions is considered as an Ottoman subject, and treated as an Ottoman subject. If he (or she) is a foreign subject it is necessary for him (or her) to prove it in a regular manner."

In reading this article it must be borne in mind that a large number of Ottoman subjects had obtained an ambiguous foreign nationality and enjoyed the privileges of the Capitulations. The Sublime Porte aimed at curtailing the latter and putting an end to the abuses of foreign protection. It therefore declares the general rule that every person residing in the Empire is an Ottoman subject. He who claims foreign nationality must prove it. Questions of nationality

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are examined by an office specially created for this purpose—namely, the Bureau of Nationality, attached to the Ottoman Department of Foreign Affairs. This office does not regard as conclusive evidence of foreign nationality the fact that a person is the bearer of a foreign passport or is registered in a foreign consulate.

N. B.—In the present translation of the law of 1869, the Turkish word "tabiyet," subjection, has been rendered as "nationality," "citizenship," or allegiance."

BULGARIA.

[Enclosure in despatch from Mr. Jackson, diplomatic agent in Bulgaria, No. 166, December 8, 1906.]

MEMORANDUM BY THE BULGARIAN MINISTRY OF FOREIGN AFFAIRS.

[Translation.]

The rights of citizens (subjects) in Bulgaria are regulated by the constitution, the fundamental law of the principality.

All Bulgarian citizens are equal before the laws, which do not admit of any division into classes, titles of nobility, or other distinctions (articles 57 and 58 of the constitution).

Bulgarian citizens alone enjoy political rights; while civil rights, in conformity with the laws, are shared by all residents of the principality (art. 60).

No one has the right to buy or sell human beings in Bulgaria. Any slave, of whatever age, sex, religion, or nationality, is free as soon as he puts foot on Bulgarian territory (art. 61).

Bulgarian subjects alone have the right to fill public offices (fonctions), municipal (civil) or military. Foreign subjects may be invited to fill public offices, but in that case the authorization of the national assembly must always be obtained.

All those are considered Bulgarian subjects who were residents of (domiciled in) the Principality at the moment of its creation, or who have been born in the Principality. All persons are also considered subjects who, since the creation of the Principality, have acquired or may acquire Bulgarian nationality in conformity with the law of January 5, 1904.

According to the provisions of this law, Bulgarian nationality may be acquired in three ways—by birth, by naturalization, and by marriage.

Bulgarian nationality can be lost—

1. When a Bulgarian subject becomes naturalized abroad, or acquires foreign nationality upon his request, by effect of articles 45, page 4, 6, page 3, 7, 15, page 2 and 16, of the law cited above. Nevertheless, if he has not complied with his military obligations in Bulgaria, his naturalization abroad has not the effect of making him lose his Bulgarian subjection, unless it has taken place with the consent of the Bulgarian Government;

2. When a Bulgarian subject declines his Bulgarian subjection, under the conditions provided for by articles 5, pages 4, 11, and 18;

3. When a Bulgarian subject, having accepted a position (fomotions publiques) conferred by a foreign government, maintains such a position, in spite of his being called upon by the Bulgarian Government to resign it within a given time;

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4. When a Bulgarian subject, without authorization from the Bulgarian Government, takes military service abroad, although he is still liable for punishment if he evades military service in his own country.

Any Bulgarian subject residing abroad loses his Bulgarian nationality if he fails to return to Bulgaria within a given time, when summoned to do so in case of war.

Any Bulgarian subject who has lost his nationality under the conditions mentioned above can recover the same by renewing his residence in Bulgaria. In that case his repatriation is made by princely decree. The quality of Bulgarian subject may also be accorded by the same decree to the wife and major children upon their demand; minor children become Bulgarian subject by right, unless they decline this quality during the year following their majority.

Any Bulgarian subject who, without authorization from his Government, takes military service abroad, may not return to Bulgaria without permission accorded by princely decree, and he can only recover his Bulgarian nationality by complying with the conditions imposed upon a foreigner, by ordinary naturalization.

The acquisition by a Bulgarian of a foreign nationality does not modify the status (sujétion) of his wife and major children. Likewise, the loss of Bulgarian nationality does not carry with it that of the wife and major children. Minor children of a widowed mother do not lose their Bulgarian nationality if their mother marries a foreign subject.

URUGUAY.

CONSTITUTION.

[Translation.]

SECTION II.—*Citizenship, the rights thereof, and the manner in which they are suspended and lost.*

CHAPTER I.

6. The citizens of the Oriental State of Uruguay are either native born or naturalized.

7. All free men born in any part of the territory of the State are native-born citizens.

8. The following are naturalized citizens: Foreigners who are the parents of native-born citizens and who were domiciled in the country before the establishment of the present constitution; the children born abroad of a father or mother born in the country, as soon as they take up their residence therein; foreigners who have fought or may fight in the army or navy of the nation as officers; foreigners, even without children, or with foreign children, but married to women of the country, who, professing some science, art, or industry, or having some capital invested in business or real estate, reside in the State at the time this constitution is adopted; foreigners, married to foreign women, who possess some of the qualifications just mentioned, and have resided three years in the State; unmarried foreigners who

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also have some of said qualifications and have resided here four years; those who are granted citizenship as a special favor by the Assembly for notable services rendered or for eminent merits.

CHAPTER II.

9. Every citizen partakes of the sovereignty of the nation, and is therefore entitled to vote and be voted for in the cases and in the manner hereinafter specified.

10. Every citizen may be called upon to fill public offices.

CHAPTER III.

11. Citizenship is suspended for the following causes:

(1) Physical or moral incapacity which prevents free and deliberate action.

(2) Being a hired servant, day laborer, a private soldier of the line, notoriously a vagrant, or undergoing a criminal prosecution which may result in a corporal or infamous punishment.

(3) Habitual drunkenness.

(4) Not having reached 21 years of age, unless married at 18.

(5) Inability to read or write, in the case of those who acquire active citizenship from and after the year 1840.

(6) Insolvency declared by a competent judge.

(7) Being a debtor in arrears to the public treasury.

CHAPTER IV.

12. Citizenship is lost for the following causes:

(1) Receiving a sentence which imposes an infamous penalty.

(2) Fraudulent bankruptcy, so declared.

(3) Naturalization in another country.

(4) Acceptance of employment, distinctions, or titles from another government without special permission of the assembly; it being possible, in any of these four cases, to request and obtain rehabilitation.

VENEZUELA.

[Enclosure in despatch from Mr. Russell, minister to Venezuela, August 5, 1906.—Translation.]

MEMORANDUM.

1. *Laws relative to citizenship in Venezuela.*

The following provision is contained in title 3, section 1, of the national constitution:

ART. 8. Venezuelans are so either by birth or naturalization.

(*a*) The following are Venezuelans by birth:

1. All persons who have been born or who may be born on Venezuelan territory; and

2. The children of Venezuelan parents, whatever be the place of their birth.

(*a*) The following are Venezuelans by naturalization:

1. Persons who have been or may be born in the Spanish-American Republics, provided they have acquired domicile in the Republic and have manifested their desire to become Venezuelans;

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2. Foreigners who have obtained naturalization papers in accordance with the laws;

3. Foreigners who acquire Venezuelan nationality by virtue of special laws; and

4. A foreign woman married to a Venezuelan, while the marriage bond continues, it being necessary, in order to preserve such nationality after the bond has been dissolved, to make the statement referred to in the following article within one year after the dissolution.

ART. 9. The declaration of a desire to become a Venezuelan must be made before the chief recording officer of the jurisdiction within which the declarant establishes his domicile, who, upon receiving it, shall record it in the proper register and send a copy of it to the National Executive for publication in the Official Gazette.

A law of May 3, 1882, defines who are the Venezuelans by birth referred to in the constitution in force at that time (that of 1881), It is as follows:

Law of May 3, 1882, defining who are the Venezuelans by birth referred to in the federal constitution as being qualified to hold high public offices.

The Congress of the United States of Venezuela decrees:

SINGLE ARTICLE. The Venezuelans by birth referred to in the federal constitution in articles 26, 66 (pars. 4 and 7), and 86 as being qualified to hold the offices of President of the Republic, Senator, member of the high federal court, diplomatic posts, consulates-general, and positions under the treasury department except that of minister, are—

First. Those born on Venezuelan territory, whatever be the nationality of their parents.

1. The territory includes the maritime and fluvial waters of the Republic, its war ships in every region, and its merchant vessels when on the high sea or in the waters of another nation whose laws do not confer local citizenship on those born therein.

2. Foreign war ships are considered as foreign territory even when situated in national waters.

3. The houses of foreign diplomatic ministers are also considered to be foreign territory for the purposes of this law as far as the children are concerned who are born therein.

Second. Persons born of a Venezuelan father or mother in any part of the territory which constitutes the Republic of Colombia, as provided by the constitution of Venezuela of 1830.

Third. Persons born in foreign countries of Venezuelan parents who were absent in the service or on account of the Republic, or by express permission of a competent authority, from September 22, 1830, to April 22, 1864, when the constitutions of 1830 and 1857 which thus declared were successively in force.

Fourth. Persons born of a Venezuelan father in foreign countries where he is fulfilling diplomatic functions.

Fifth. The children of a Venezuelan mother or father who were born in another territory, if they have come to establish their domicile in the country and have expressed their desire to this effect, according to the similar provisions of the constitutions of 1864, 1874, and 1881.

Given in the Palace of the Federal Legislative Body, in Caracas, May 4, 1882. Year 19 of the Law and 24 of the Federation.

J. P. ROJAS PAÚL,
President of the Senate Chamber.

A. COVA,
President of the Chamber of Deputies.

M. CABALLERO,
Secretary of the Senate Chamber.

J. NICOMEDES RAMÍREZ,
Secretary of the Chamber of Deputies.

Federal Palace in Caracas, May 3, 1882.
Year 19 of the Law and 24 of the Federation.
Let it be enforced.

GUZMÁN BLANCO.

Countersigned:

EZEQUIEL MARÍA GONZÁLEZ,
Acting Minister of the Interior.

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2. *Means by which citizenship in Venezuela is lost.*

The only provision existing in our laws regarding loss of citizenship is article 19 of the Civil Code, which reads as follows:

A Venezuelan woman who marries a foreigner shall be considered as a foreigner with regard to the rights peculiar to Venezuelans, provided she acquires the nationality of her husband by the fact of marriage, and while she remains married.

The rights peculiar to Venezuelans mentioned in this article are political rights, and may be summed up into those of voting and being voted for.

3. *Does the law of Venezuela authorize or not the renunciation of citizenship; and if so, what are the conditions for reacquiring the citizenship thus renounced?*

A provision which was contained in some previous constitutions is not included in the national constitution now in force, to wit: Those who establish their domicile and acquire citizenship in a foreign country do not lose their Venezuelan nationality.

A law of May 15, 1882, reads as follows:

Law of May 15, 1882, by which it is declared that article 6 of the Federal constitution does not deny the right of expatriation, and is applicable to the case in which Venezuelans who have made use of this right return to the Republic.

The Congress of the United States of Venezuela decrees:

SINGLE ARTICLE. Article 6 of the Federal constitution, according to which "those who establish their domicile and acquire nationality in a foreign country do not lose their Venezuelan nationality," does not deny the right of expatriation, but merely declares a principle which is applicable to the case in which the citizens in question return to the Republic, which then considers them as if they had remained in it continually.

Given in the Federal Palace of the Legislative Body, in Caracas, May 5, 1882. Year 19 of the Law and 24 of the Federation.

J. P. ROJAS PAÚL,
President of the Senate Chamber.
A. COVA,
President of the Chamber of Deputies.
M. CABALLERO,
Secretary of the Senate Chamber.
J. NICOMEDES RAMÍREZ,
Secretary of the Chamber of Deputies.

Federal Palace in Caracas, May 15, 1882.
Year 19 of the Law and 24 of the Federation.
Let it be enforced.

GUZMÁN BLANCO.

Countersigned:
EZEQUIEL MARÍA GONZÁLES,
Acting Minister of the Interior.

(Collection of Laws and Degrees of Venezuela. Vol. X, No. 2418.)

4. *May residence in foreign countries affect the citizenship of origin, and if so, to what extent?*

The residence in a foreign country of a Venezuelan can not affect his nationality no matter how long such residence may be.

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5. *The practice of the Venezuelan Government in protecting its citizens residing permanently in other countries.*

This protection is afforded by the Venezuelan Government in accordance with the general principles of law.

It may be appropriate to quote here article 20 of the Penal Code, which provides as follows:

The extradition of a Venezuelan can not be granted for any cause; however, he must be prosecuted in Venezuela at the instance of the injured party or of the public prosecutor, if the crime with which he is charged is punishable according to the Venezuelan laws.

6. *Law regarding naturalization and the acquisition of citizenship.*

There is a law on the naturalization of foreigners, dated June 13, 1865, to wit:

Decree of June 13, 1865, abrogating law No. 547 of 1844 on the naturalization of foreigners.

The Congress of the United States of Venezuela decrees:

ART. 1. All foreigners may obtain naturalization papers who request them provided they reside in the country.

ART. 2. A foreigner desiring naturalization papers shall apply directly to the National Executive, or through the President of the State where he resides, in a memorial stating his desire to become naturalized, the nation of his origin, his status and profession, and making a promise of fidelity to the constitution and laws of the Union, besides giving any other grounds of which he wishes to avail himself.

ART. 3. The National Executive shall issue the papers on the strength of the application.

ART. 4. When the naturalization papers have been issued and a record thereof made in the register of the ministry of foreign relations, they shall be published in the press.

ART. 5. Persons already naturalized by virtue of the laws of Colombia and Venezuela shall continue in conformity therewith in the enjoyment of their rights without the necessity of new papers.

ART. 6. The law on the subject of May 27, 1844, is abrogated.

Given in the Hall of Sessions of Congress in Caracas, June 8, 1865, being the 2nd of the Law and the 7th of the Federation.

ANTONIO L. GUZMÁN,
President of the Senate.
VICTOR J. DIEZ,
President of the Chamber of Deputies.
ANDRÉS A. SILVA,
Secretary of the Senate.
J. A. TORREALBA,
Secretary of the Chamber of Deputies.

Caracas, June 13, 1865, 2d and 7th.

Let it be enforced.

A. GUZMÁN BLANCO.

By the General Citizen First Designated, exercising the functions of President of the Republic.

J. R. PACHANO,
Minister of the Interior and Justice.

(Collection of Laws, Vol. IV, No. 1497.)

The following is another law on the same subject:

Law of May 25, 1882, by which it is declared that the minor children of foreigners naturalized or to be naturalized in Venezuela, immigrants protected by the laws of immigration, and foreigners exercising the right of suffrage in the Republic are Venezuelans.

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The Congress of the United States of Venezuela decrees:

ART. 1. The minor children of foreigners naturalized or to be naturalized in Venezuela in accordance with the law in force of June 13, 1865, become naturalized at the same time as the father, or in default of the latter, the mother.

ART. 2. The wife is also considered to be naturalized at the same time as her husband.

ART. 3. The minor natural children of a mother who becomes naturalized follow the status of the latter.

ART. 4. As the National Executive declared in a resolution of December 1, 1865, all persons are Venezuelans who have come or may come to the country as immigrants, provided they have received the benefits of the immigration law, for this was a condition previously established by the said decree. It does not matter if they have not asked or do not ask for citizenship papers.

ART. 5. The exercise of the right of suffrage on the part of a foreigner implies the acquisition of citizenship in Venezuela without the need of papers.

Every time that this happens the president of the respective electoral board shall make it known, through the governor of the federal district or the president of the State, as the case may be, to the ministry of foreign relations in order that the latter may record the person in the register of naturalized citizens.

ART. 9. Persons who have adopted the nationality of the Republic have no right to divest themeselves thereof by returning the naturalization papers or having themselves inscribed in registers of foreigners.

Given in the Palace of the Federal Legislative Body, at Caracas, May 23, 1882. Year 19 of the Law and 24 of the Federation.

J. P. ROJAS PAÚL,
President of the Senate.
A. COVA,
President of the Chamber of Deputies.
M. CABALLERO,
Secretary of the Senate.
J. NICOMEDES RAMÍREZ,
Secretary of the Chamber of Deputies.

Federal Palace in Caracas, May 25, 1882.
Year 19 of the Law and 24 of the Federation.
Let this be enforced.

GUZMÁN BLANCO.

Countersigned:

EZEQUIEL MA. GONZÁLES,
Minister of the Interior.

The law in force on immigration does not compel the immigrant to become a Venezuelan citizen.

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